

# Ohio Food, Dairy and Drug Laws

[Also

Sanitary Inspection, Weights and  
Measures, Narcotic and Cold  
Storage Laws

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Compiled by

The Department of Agriculture of Ohio  
Division Foods and Dairies

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1923

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Ohio. Laws, statutes, etc.

# OHIO FOOD, DAIRY AND DRUG LAWS

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Sanitary Inspection, Weights and Measures  
Narcotic and Cold Storage Laws

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Compiled by

M. J. DOTTER, *Inspector*

THE DEPARTMENT OF AGRICULTURE  
OF OHIO

1923



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# L A W S

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Regulating the Manufacture and Sale of

Food, Drink, Drugs, Narcotics, Ice Cream and Bread,

Paints, Linseed Oil and Turpentine, and

Against Fraud and Deception Therein;

Sanitary Inspection;

Weights and Measures;

Law of Procedure;

Laws Regulating Cold Storage Warehouses;

Canning Factories, Bottling Factories, Ice Cream Factories and Bakeries.



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# GENERAL CODE OF OHIO

## DEPARTMENT OF AGRICULTURE

### Dairy and Food Division

SECTION 154-1. In order that the governor may exercise the supreme executive power of the state vested in him by the constitution and adequately perform his constitutional duty to see that the laws are faithfully executed, the administrative functions of the state are organized as provided in this chapter. Executive authority.

All powers vested in and duties imposed upon the lieutenant governor, the secretary of state, the auditor of state, the treasurer of state and the attorney general by the constitution and the laws shall continue except as otherwise provided by this chapter.

SECTION 154-2. As used in this chapter:

“Department” means the several departments of state administration enumerated in section 154-2 of the General Code.

“Division” means a part of a department established as provided in section 154-8 of the General Code, for the convenient performance of one or more of the functions committed to a department by this chapter.

The phrase “departments, offices and institutions” includes every organized body, office and agency established by the constitution and laws of the state for the exercise of any function of the state government, and every institution or organization which receives any support from the state.

SECTION 154-3. The following administrative departments are created:

The department of finance, which shall be administered by the director of finance, hereby created;

The department of commerce, which shall be administered by the director of commerce, hereby created;

The department of highways and public works, which shall be administered by the superintendent of public works as director thereof;

The department of agriculture, which shall be administered by the director of agriculture, hereby created;

The department of health, which shall be administered by the director of health, hereby created; Director of Agriculture.

The department of industrial relations, which shall be administered by the director of industrial relations, hereby created;

The department of education, which shall be administered by the superintendent of public instruction, as director thereof;

The department of public welfare, which shall be administered by the director of public welfare, hereby created;

The director of each department shall, subject to the provisions of this chapter, exercise the powers and perform the duties vested by law in such department.

SECTION 154-4. Each director whose office is created by section 154-3 of the General Code shall be appointed by the governor by and with the advice and consent of the senate, and shall hold his office during the pleasure of the governor.

SECTION 154-5. In each department there shall be an assistant director, who shall be designated by the director to fill one of the offices within such department, enumerated in section 154-6 of the General Code, or as head of one of the divisions created within such department as authorized by section 154-8 of the General Code. When a vacancy occurs in the office of director of any department, the assistant director thereof shall act as director of the department until such vacancy is filled.

SECTION 154-6. Offices are created within the several departments as follows:

In the Department of Finance

- Superintendent of budget
- Superintendent of purchases and printing

In the Department of Commerce

- Superintendent of building and loan associations
- Fire marshal
- Superintendent of insurance

In the Department of Highways and Public Works

- State architect and engineer
- State highway engineer

Divisions  
of Department  
of  
Agriculture.

In the Department of Agriculture

Chiefs of divisions as follows:

- Animal industry
- Fish and game
- Foods and dairies
- Plant industry
- State fair

In the Department of Industrial Relations

Chiefs of divisions as follows:

- Factory inspection
- Labor statistics
- Mines

In the Department of Education

Chiefs of divisions as follows:

Examination and licensing  
Film censorship

In the Department of Public Welfare

Fiscal supervisor  
Superintendent of charities  
Superintendent of pardon and parole.

SECTION 154-7. The officers mentioned in sections 154-5 and 154-6 of the General Code shall be appointed by the director of the department in which their offices are respectively created, and shall hold office during the pleasure of such director.

Appointment  
of heads of  
divisions.

SECTION 154-8. The officers mentioned in sections 154-5 and 154-6 of the General Code shall be under the direction, supervision and control of the directors of their respective departments, and shall perform such duties as such directors shall prescribe.

With the approval of the governor, the director of each department shall establish divisions within his department, and distribute the work of the department among such divisions. Each officer created by section 154-6 of the General Code shall be the head of such a division.

Powers and  
duties of  
officers.

With the approval of the governor, the director of each department shall have authority to consolidate any two or more of the offices created in his department by section 154-6 of the General Code, or to reduce the number of or create new divisions therein.

The director of each department may prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its employes, the performance of its business and the custody, use and preservation of the records, papers, books, documents and property pertaining thereto.

SECTION 154-11. The director of agriculture shall be a person actively identified with agriculture.

Qualifications  
of director  
and other  
officers.

The chief of the division of animal industry in the department of agriculture shall be a graduate of a recognized college of veterinary medicine and licensed to practice veterinary medicine and surgery in this state.

SECTION 154-14. Each officer whose office is created by section 154-3, 154-5 and 154-6 of the General Code shall, before entering upon the duties of his office, take and subscribe an oath of office as provided by law and give bond, conditioned according to law, with security to be approved by the governor in such penal sum as shall be fixed by the governor, not less in any case than ten thousand dollars. Such bond and oath shall be filed in the office of the secretary of state.

Bond, oath.

Same.

The director of each department may, with the approval of the governor, require any chief of a division created under the authority of this chapter, or any officer or employe in his department, to give like bond in such amount as the governor may prescribe. The premium, if any, on any bond required or authorized by this section may be paid from the state treasury.

Advisory  
Boards.

SECTION 154-15. The director of each department may, with the approval of the governor, establish and appoint advisory boards to aid in the conduct of the work of his department or any division or divisions thereof. Such advisory boards shall exercise no administrative function, and their members shall receive no compensation, but may receive their actual and necessary expenses.

Expenses.

SECTION 154-16. Each officer whose office is created by sections 154-3, 154-5 and 154-6 of the General Code shall devote his entire time to the duties of his office, and shall hold no other office or position of profit. In addition to his salary provided by law, each such officer and each member of the boards and commissions in the departments created by this chapter shall be entitled to his actual and necessary expenses incurred in the performance of his official duties.

Office of  
Dept.

SECTION 154-17. Each department shall maintain a central office in the city of Columbus. The director of each department may, in his discretion and with the approval of the governor, establish and maintain, at places other than the seat of government, branch offices for the conduct of any one or more functions of his department.

Seal.

SECTION 154-18. Each department shall adopt and keep an official seal, which shall have engraved thereon the coat of arms of the state as described in section thirty of the General Code, shall be one and three-fourths inches in diameter, and shall be surrounded by the proper name of the department, to which may be added the title of any division, board or commission within the department, if the director of the department shall so prescribe. Such seal may be affixed to any writs and authentications of copies of records and official papers, and to such other instruments as may be authorized by law or prescribed by the proper authority in any department to be executed. When so authenticated, any copy of such record, official paper, or other instrument shall be received in evidence in any court in lieu of the original.

Records.

Each department shall provide for the keeping, within such department, of such records and journals as may be necessary to exhibit its official actions and proceedings.

Employes.

SECTION 154-19. Each department is empowered to employ, subject to the civil service laws in force at the time the employment is made, the necessary employes, and, if the rate of compensation is not otherwise fixed by law,

to fix their compensation. Nothing in this chapter shall be construed to amend, modify or repeal the civil service laws of the state, except as herein expressly provided.

All offices created by sections 154-5 and 154-6 of the General Code shall be in the unclassified civil service of the state.

SECTION 154-20. All employees in the several departments shall render not less than eight hours of labor each day, Saturday afternoons, Sundays and days declared by law to be holidays excepted in cases in which, in the judgment of the director, the public service will not thereby be impaired.

Employees' duties, privileges, etc.

Each employee in the several departments shall be entitled during each calendar year to fourteen days leave of absence with full pay. In special and meritorious cases where to limit the annual leave to fourteen days in any one calendar year would work peculiar hardships, it may, in the discretion of the director of the department, be extended. No employee in the several departments, employed at a fixed compensation, shall be paid for any extra services, unless expressly authorized by law.

SECTION 154-21. Under the direction of the governor, the directors of departments shall devise a practical and working basis for cooperation and coordination of work and for the elimination of duplication and overlapping functions. They shall, so far as practicable, cooperate with each other in the employment of services and the use of quarters and equipment. The director of any department may empower or require an employee of another department, subject to the consent of the superior officer of the employee, to perform any duty which he might require of his own subordinates.

Dept. co-operation.

SECTION 154-22. Each department shall make and file a report of its transactions and proceedings at the time and in the manner prescribed by section 2264-1 of the General Code.

Reports.

SECTION 154-23. Whenever power is vested in any of the departments created by this chapter, or in any other state department, board or commission, to inspect, examine, secure data or information, or to procure assistance from another department, office or institution, a duty is hereby imposed upon the department, office or institution, upon which demand is made, whether created by this chapter or otherwise, to make such power effective.

Powers and duties.

SECTION 154-24. Whenever rights, powers or duties which have heretofore been vested in or exercised by any officer, board, commission, institution or department, or any deputy, inspector or subordinate officer thereof, are, by this chapter, transferred, either in whole or in part, to or vested in a department created by this chapter, or any other department, office or institution, such rights, powers and duties shall be vested in, and shall be exercised by the de-

Transfer of powers and duties to new dept.

partment, office or institution to which the same are hereby transferred, and not otherwise; and every act done in the exercise of such rights, powers and duties shall have the same legal effect as if done by the former officer, board, commission, institution or department, or any deputy, inspector, or subordinate officer thereof. Every person, firm and corporation shall be subject to the same obligations and duties and shall have the same rights arising from the exercise of such rights, powers and duties as if such rights, powers and duties were exercised by the officer, board, commission, department or institution, or deputy, inspector or subordinate thereof, designated in the respective laws which are to be administered by departments created by this chapter. Every person, firm and corporation shall be subject to the same penalty or penalties, civil or criminal, for failure to perform any such obligation or duty, or for doing a prohibited act, as if such obligation or duty arose from, or such act were prohibited in, the exercise of such right, power or duty by the officer, board, commission or institution, or deputy, inspector or subordinate thereof, designated in the respective laws which are to be administered by departments created by this chapter. Every officer and employe shall, for any offense, be subject to the same penalty or penalties, civil or criminal, as are prescribed by existing law for the same offense by any officer or employe whose powers or duties devolve upon him under this chapter.

Reports,  
etc.,  
required.

SECTION 154-25. Wherever reports or notices are now required to be made or given, or papers or documents furnished or served by any person to or upon any officer, board, commission or institution, or deputy, inspector or subordinate thereof, abolished by this chapter, the same shall be made, given, furnished, or served in the same manner to or upon the department, office or institution upon which are devolved by this chapter the rights, powers and duties now exercised or discharged by such officer, board, commission or institution, or deputy, inspector or subordinate thereof; and every penalty for failure so to do shall continue in effect.

Offices  
abolished.

SECTION 154-26. The following offices, boards, commissions, arms and agencies of the state government heretofore created by law are hereby abolished:

- The Ohio board of clemency,
- The state purchasing agent,
- The state registrar of vital statistics,
- The officer commonly known as the "Budget Commissioner",
- The state board of education,
- The secretary of the public utilities commission of Ohio,
- The superintendent of insurance,
- The inspector of building and loan associations,
- The superintendent of banks,
- The commissioner of securities,
- The commissioners of public printing,

The supervisor of public printing,  
 The state board of library commissioners,  
 The librarian appointed by the state board of library commissioners,  
 The library organizer appointed by the state board of library commissioners,  
 The director of the legislative reference department.  
 The state geologist,  
 The state fire marshal,  
 The state inspector of oils,  
 The board of censors of motion picture films under the authority and supervision of the industrial commission of Ohio,  
 The board of agriculture of Ohio,  
 The secretary of agriculture,  
 The head of the bureau of markets and marketing under the board of agriculture of Ohio,  
 The chief of the bureau of horticulture under the board of agriculture of Ohio,  
 The inspector of canneries under the board of agriculture of Ohio,  
 The board of control of the Ohio agricultural experiment station,  
 The agricultural advisory board,  
 The state highway commissioner,  
 The chief highway engineer,  
 The commissioner of health,  
 The state inspector of plumbing,  
 The board of state charities,  
 The secretary of the board of state charities,  
 The secretary of the tax commission of Ohio,  
 The Ohio board of administration,  
 The fiscal supervisor-secretary of the Ohio board of administration,  
 The state building commission.

SECTION 154-35. Each department, office and institution of the state government, other than the legislative and judicial departments thereof, shall, before any appropriation to such department becomes available for expenditure, prepare and submit to the department of finance an estimate of the amount required for each specific purpose within the appropriation, or items of appropriation, as made by the general assembly, and accounts shall be kept and reports rendered to the department of finance showing the expenditure for each such purpose. The department of finance shall exercise such control over items of appropriation accounts created by the general assembly, with respect to changes and adjustments therein within the general scope of a specific appropriation, as may be committed to it by any act making appropriations, and shall in general exercise such control over the expenditure of appropriations, in addition to that specifically provided for in this chapter, as may be so committed to it.

Expenditure  
of funds.

Powers of  
Dept. of  
Agriculture.

SECTION 154-42. - The department of agriculture shall have all powers and perform all duties vested by law in the board of agriculture, the secretary of agriculture, the agricultural advisory board, the chief of the division of fish and game under the board of agriculture, and all officers and employes in such division, and in all other bureaus and offices established or authorized by law under the board of agriculture or the secretary of agriculture. Wherever powers are conferred or duties imposed by law upon such board of agriculture or secretary of agriculture, or upon bureaus or offices under either of them, such powers and duties shall be, excepting as herein provided, construed as vested in and imposed upon the department of agriculture.

Board of  
control.

SECTION 1173. The board of control shall exercise all powers, and through such agency as it may select, perform such duties as are vested by any law in or imposed upon the board of control of the Ohio agricultural experiment station.

Agricultural  
Advisory  
Board.

The governor shall appoint an advisory board, which shall be known as "the state board of agriculture" and which shall consist of ten members, who shall be practical farmers. The initial appointments hereunder shall be as follows: Two members to serve for one year, two for two years, two for three years, two for four years and two for five years. Thereafter two members shall be appointed each year for the period of five years. Such board shall advise the department of agriculture with respect to the work of that department; the board of control of the Ohio agricultural experiment station; and the department of public welfare with reference to the management of institutional farms. Such board shall exercise no administrative function and its members shall receive no compensation, but may receive their actual and necessary expenses, which shall be paid from appropriations made to the department of agriculture. This section shall not be so construed as to prevent the appointment in the department of agriculture or the department of public welfare of other advisory boards authorized by law.

Salaries.

SECTION 2250. The annual salaries of the appointive state officers and employes herein enumerated shall be as follows:

Department of Finance:

Director of Finance, six thousand five hundred dollars.

Superintendent of budget, four thousand dollars.

Superintendent of purchases and printing, five thousand dollars.

Department of Commerce:

Director of commerce, six thousand five hundred dollars.

Superintendent of building and loan associations, five thousand dollars.

State fire marshal, four thousand five hundred dollars.

Superintendent of insurance, five thousand dollars.

#### Department of Highways and Public Works:

Superintendent of public works as director of highways and public works, six thousand five hundred dollars.

State architect and engineer, four thousand dollars.

State highway engineer, five thousand dollars.

#### Department of Agriculture:

Director of agriculture, six thousand five hundred dollars.

Chief of division of animal industry, three thousand six hundred dollars.

Chief of division of fish and game, three thousand six hundred dollars.

Chief of division of foods and dairies, three thousand dollars.

Chief of division of plant industry, three thousand dollars.

Chief of division of state fair, three thousand six hundred dollars.

#### Department of Health:

Director of health, six thousand five hundred dollars.

#### Department of Industrial Relations:

Director of industrial relations, six thousand five hundred dollars.

Chief of division of factory inspection, three thousand dollars.

Chief of division of labor statistics, three thousand dollars.

Chief of division of mines, three thousand six hundred dollars.

#### Department of Education:

Superintendent of public instruction as director of education, six thousand five hundred dollars.

Chief of division of examination and licensing, two thousand five hundred dollars.

Chief of division of film censorship, three thousand six hundred dollars.

#### Department of Public Welfare:

Director of public welfare, six thousand five hundred dollars.

Fiscal supervisor, four thousand dollars.

Superintendent of charities, four thousand dollars.  
 Superintendent of pardon and parole, four thousand dollars.

Commissioner of soldiers' claims, two thousand five hundred dollars.

The assistant director of a department designated to fill one of the offices within such department for which a salary is fixed by this section shall receive the salary fixed therein for the position so held by him.

Contracts,  
 etc.

SECTION 2288-2. It shall be unlawful for any officer, board or commission of the state to enter into any contract, agreement or obligation involving the expenditure of money, or pass any resolution or order for the expenditure of money, unless the director of finance shall first certify that there is a balance in the appropriation pursuant to which such obligation is required to be paid, not otherwise obligated to pay precedent obligations.

Civil  
 service.

SECTION 4. Every officer and employe in the classified civil service of the state civil service at the time this act takes effect shall be assigned to a position in the proper department created by this act, and, so far as possible, to duties equivalent to his former office or employment; and such officers and employes shall be employes of the state in the classified civil service of the state of the same standing, grade and privileges which they respectively had in the office, board, department, commission or institution from which they were transferred, subject, however, to existing and future civil service laws. This section shall not be construed to require the retention of more employes than are necessary to the proper performance of the functions of such departments.

Records.

All books, records, papers, documents, property, real and personal, and pending business in any way pertaining to the rights, powers and duties by this act transferred to or vested in a department created by this act, or to or in any other office, department or institution, at the time this act takes effect shall be delivered and transferred to the department, office or institution succeeding to such rights, powers and duties.

Actions,  
 rights, etc.

This act shall not affect any act done, ratified or affirmed, or any right accrued or established, or any pending action, prosecution or proceedings, civil or criminal, at the time it takes effect; nor shall this act affect causes of such action, prosecution or proceeding existing at the time it takes effect; but such actions, prosecutions or proceedings may be prosecuted and continued, or instituted and prosecuted, by or before the department having jurisdiction or power under this act of the subject matter to which such action, prosecution or proceeding pertains.

If the senate is not in session at the time initial appointments are to be made under this act, the governor shall make temporary appointments as in case of a vacancy, to all offices required by this act to be filled by appointment by the governor by and with the advice and consent of the senate, unless the initial appointments are otherwise provided for in this act.

Appointments.

If this act shall go into effect prior to the expiration of the present fiscal year, the present existing departments, bureaus, offices, boards, commissions, and other organizations of the state government affected by this act shall continue, and the officers and employes therein shall continue to serve until the expiration of the present fiscal year for which appropriations have been made, unless their terms of office expire prior thereto; and the reorganization herein provided for shall be put into effect and the officers whose positions are hereby created shall assume their duties at the commencement of the succeeding fiscal year.

SECTION 1085. Any investigation, inquiry or hearing which the board of agriculture is empowered by law to hold or undertake may also be held or undertaken by or before the secretary of agriculture. (107 v. 461).

Hearing by board or secretary.

SECTION 1086. The board of agriculture shall maintain its office in the state capitol in the city of Columbus and shall provide a suitable room or rooms, necessary office furniture, stationery, books, periodicals, maps, instruments and other necessary supplies. The board of agriculture may hold sessions at any place within the state. The necessary expenses shall be audited and paid as other expenses are audited and paid. (105-106 v. 144).

Place of office and of holding meetings; equipment and supplies.

SECTION 1087-1. From and after the taking effect of this act, the secretary of agriculture shall do all the work and perform all the duties, which, by any of the laws of the state, are placed upon the agricultural commission, and wherever the words "agricultural commission" are found in the laws of the state, they shall be construed to refer to the "secretary of agriculture." (107 v. 461).

General powers and duties of secretary.

SECTION 1091. The board of agriculture may accept and hold on behalf of Ohio any grant, gift, devise, or bequest of money or property made to or for the use of the board or for promoting any part of the public welfare that shall be under the supervision and control of the board. The board of agriculture shall have full power to contract for and carry out the terms and conditions of any devise, grant, gift, or donation that may be made for the purpose of carrying out the objects and purposes of this act. (105-106 v. 145).

Gifts, grants, bequests, etc.

See opinions of Attorney General (1914), Vol. II, p. 1251.

SECTION 1096. The board of agriculture or the secretary of agriculture, or authorized representatives may confer and meet with the officers of other states and officers of the United States on any matter pertaining to their official duties. (107 v. 463).

Conferences with officers of the U. S. and other states.

Rules and regulations shall be adopted.

SECTION 1098. The board of agriculture shall adopt reasonable and proper rules and regulations to govern its proceedings and to regulate the mode and manner of all investigations, inspections and hearings not otherwise specifically provided for. (105-106 v. 147).

See opinions of Attorney General (1914), Vol. I, p. 928.

Powers to conduct hearings, administer oaths, etc.

SECTION 1100. The board of agriculture or any member thereof, the secretary of agriculture and every person appointed by him to conduct investigations, inquiries or hearings shall, for the purposes contemplated in this act, have power to administer oaths, certify to official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony. (107 v. 463).

See opinions of Attorney General (1914), Vol. I, p. 928.

Inspection of books, accounts and records of persons, firms, etc.

SECTION 1101. To carry out the purpose of the laws which they are required to administer, the board of agriculture, or any member thereof, the secretary of agriculture or any person or persons designated by the secretary for that purpose, shall upon demand, have the right to inspect books, accounts, records, and memoranda of any company, firm, corporation, persons, association, or co-partnership, subject to the provision of such laws, and to examine under oath any person, including any officer, agent or employe of any such company, firm, corporation, person, association, or co-partnership. Any person, other than a member of such board of agriculture, or the secretary of agriculture, who shall make such demand, shall produce his authority to make such inspection. (107 v. 464).

See opinions of Attorney General (1914), Vol. I, p. 928.

Production of books, accounts, papers, etc.; forfeiture.

SECTION 1102. The board of agriculture, or the secretary of agriculture, may require, by order of subpoena, to be served on any company, firm, corporation, person, association, or co-partnership in the same manner that a summons is served in a civil action at such time and place as they or either of them may designate, the production of any books, accounts, papers or records kept by it in any office or place within or without the state of Ohio, or verified copies in lieu thereof, if the board, or the secretary, shall so order, in order that an examination thereof may be made by the board, or the secretary, or under their direction. Any such company, firm, corporation, person, or co-partnership failing or refusing to comply with any such order or subpoena, shall, for each day it so fails or refuses, forfeit and pay into the state treasury a sum of not less than fifty dollars nor more than five hundred dollars. (107 v. 464).

See opinions of Attorney General (1914), Vol. I, p. 928.

Appointments of agent for investigation; powers and duties.

SECTION 1103. For the purpose of making any investigation with regard to any company, firm, corporation, person, association or co-partnership, subject to the provisions of the laws which the board of agriculture or secretary of

agriculture is required to administer, the secretary of agriculture shall have power to appoint, by an order in writing, an agent whose duty shall be prescribed in such order. In the discharge of his duties such agent shall have every power whatsoever of an inquisitorial nature granted by law to the secretary of agriculture and the same powers as a notary public, with regard to the taking of deposition; and all powers given by law to a notary public relative to depositions, are hereby given to such agent. Except in his report, to the secretary of agriculture or when called on to testify in any court or proceedings, any such agent who shall divulge any information acquired by him in respect to the transaction, property or business of any company, firm, corporation, person, association or co-partnership while acting or claiming to act under such order, shall be fined not less than fifty dollars, nor more than one hundred dollars, and shall thereafter be disqualified from acting as agent in any other capacity under the appointment or employment of the secretary of agriculture. (107 v. 464).

See opinions of Attorney General (1914), Vol. I, p. 928.

SECTION 1104. Any number of such investigations may be conducted contemporaneously and the secretary of agriculture may delegate to any agent the taking of all testimony bearing upon any investigation or hearing. (107 v. 465).

Contemporaneous investigations.

See opinions of Attorney General (1914), Vol. I, p. 928.

SECTION 1105. The attorney general shall be the legal advisor of the board of agriculture and the secretary of agriculture in all matters relating to their powers and duties and the secretary of state shall furnish to the board of agriculture and the secretary of agriculture such stationery as they require for the proper discharge of their duties and blank books necessary to record their transactions. (107 v. 465).

Legal adviser; furnishing of books and stationery.

See opinions of Attorney General (1914), Vol. I, p. 928.

SECTION 1106. Upon the request of the secretary of agriculture, the attorney general, or under his direction, the prosecuting attorney of any county, shall aid in any investigation, hearing or trial had under the laws which the board of agriculture or the secretary is required to administer, and shall institute and prosecute all necessary actions or proceedings for the enforcement of such laws, and for the punishment of all violations thereof, arising within the county in which he was elected. (107 v. 465).

Who will institute and prosecute actions.

See opinions of Attorney General (1914), Vol. I, p. 928. Cited: Chemical Co. v. Calvert, 7 O. N. P. (N. S.) 103; 180 O. D. (N. P.) 583.

SECTION 1118. The secretary of agriculture may accept, on behalf of the state, the rules and regulations prepared by the secretary of agriculture of the United States under authority of an act of congress, and co-operate

Co-operation with U. S. authorities.

with the authorities of the United States in the enforcement of their provisions. (107 v. 467).

Penalty for non-compliance with rules.

SECTION 1119. A person, firm or corporation who fails to comply with the rules of the board of agriculture, or with the rules of the secretary of agriculture, or fails to respect any lawful regulations, prescribed by them or either of them when notified so to do shall be fined and pay not less than fifty dollars nor more than five hundred dollars. (107 v. 467).

Adoption of Standards; enforcement of laws.

SECTION 1177-12. The secretary of agriculture shall establish standards of quality, purity and strength for foods, when such standards are not otherwise established by any law of this state. Such standards shall conform to the standards for foods adopted by the United States department of agriculture. The secretary of agriculture shall make such uniform rules and regulations as may be necessary for the enforcement of the food, drug, dairy and sanitary laws of this state. Such rules and regulations shall, where applicable, conform to and be the same as the rules and regulations adopted from time to time for the enforcement of the act of congress, approved June 30, 1906, and amended March 3, 1913, and known as "the food and drug act." The secretary of agriculture shall inspect drugs, butter, cheese, lard, syrup and other articles of food or drink, made or offered for sale in the state and prosecute or cause to be prosecuted each person, firm or corporation engaged in the manufacture or sale of an adulterated drug or article of food or drink, in violation of law, and shall enforce all laws against fraud, adulteration or impurities in foods, drinks, or drugs, and unlawful labeling within the state. (107 v. 477).

Inspections and prosecutions.

On subject of adulterations see G. C., Sec. 5774, et. seq.

Cited: *Arbuckle v. Blackburn*, 191 U. S. 405, 11 O. F. D. 321 (dismissing appeal from *Arbuckle v. Blackburn*, 113 Fed. 616, 51 C. C. A. 122, 13 O. F. D. 44); *State, ex rel. v. Dairy Co.*, 62 O. S. 123; *Williams v. McNeal*, 7 O. C. C. 280, 4 O. C. D. 596.

Right of entry to make examination.

SECTION 1177-13. The secretary of agriculture in the performance of his duties may enter a creamery, factory, store, salesroom, drug store, laboratory or other place where he believes or has reason to believe drugs, food, drink, or linseed oil, is made, prepared, dispensed, sold or offered for sale, examine the books therein, and open a cask, tub, jar, bottle or other package containing or supposed to contain a drug or an article of food or drink and examine or cause to be examined and analyzed the contents thereof. (107 v. 478).

Injunction will not lie at the suit of an inspector employed by the dairy and food commissioner to compel a manufacturer and seller of an article of food or drink to furnish for analysis as provided by G. C. Sec. 5776, samples of articles manufactured or sold. The remedy for refusing to comply with the requirements of that section is by prosecution under G. C. Sec. 12757 and Sec. 12758; *State, ex rel., v. Dairy Co.*, 62 O. S. 123.

Quo warranto will lie against a corporation for violation of such provisions of the statute, and that such violation, if flagrant, such corporation may be ousted: *State, ex rel., v. Dairy Co.*, 62 O. S. 350.

SECTION 1177-14. All fines, fees and costs collected under prosecutions begun, or caused to be begun, by the secretary of agriculture, shall be paid by the court to the secretary of agriculture within thirty days after collection, unless error proceedings have been properly begun and prosecuted and in case the judgment of the justice of the peace is sustained the fine shall be paid within thirty days after such judgment or affirmance, and by the secretary paid into the state treasury to the credit of the general revenue fund. (107 v. 478).

Disposition of fines, fees and costs.

See opinion of Attorney General (1914), Vol. II, p. 1218. *State, ex rel., v. Dairy Co.*, 62 O. S. 123.

SECTION 1177-15. If the court fails to pay such fine within the time specified in the preceding section and after demand has been made therefor, the secretary of agriculture shall add ten per cent, thereto and certify such claim and penalty to the auditor of state under the provisions of section 20 of the General Code. (107 v. 478).

Suit by secretary on failure of court to pay.

SECTION 1177-21. The board of agriculture shall keep a record of its acts and investigations, and shall make an annual report to the governor giving the results of its activities with such recommendations as it may deem proper. The board of agriculture may also publish and distribute bulletins from time to time on matters of general interest relating to the work of the board. (105-106 v. 176).

Record of acts; annual report bulletins.

SECTION 123. Each section of this act, and every part thereof is hereby declared to be an independent section and part of section, and if any section or part of a section is void or ineffective for any cause it shall not affect any other section or part of a section of this act. (105-106 v. 176):

Section or parts held void does not affect other section or part.

SECTION 12757. Whoever refuses to allow the secretary of agriculture, his inspectors or agents to enter a creamery, factory, store, salesroom, drug store, laboratory, booth, vehicle, steam or electric car or place which he or such inspector or agent desires to enter in the discharge of his official duty, or interferes with such secretary or his inspector or agent in such discharge, or refuses to deliver to him or his inspector or agent a sample of food, drug or linseed oil made, sold, offered for sale by such person. upon request therefor and tender of the value thereof, shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than three hundred dollars or imprisoned in jail not less than thirty days nor more than one hundred days, or both. (107 v. 494).

Refusing Secretary of Agriculture entrance to factory, etc.; penalty.

The federal courts have no authority to restrain the enforcement of the pure food laws by the dairy and food commissioner of Ohio: *Arbuckle vs. Blackburn*, 113 Fed. 616, 51 C. C. A. 122, 13 O. F. D. 44.

Co-operation  
with boards  
and managing  
officers of  
institutions.

SECTION 1850. The secretary of agriculture, the state board of health, and the Ohio State University respectively, shall co-operate with the board and managing officer of each institution in making such co-operative tests as are necessary to determine the quality, strength and purity of supplies, of the value and use of farm lands, or condition and needs of mechanical equipment. (107 v. 490).

See opinions of Attorney General (1913), Vol. I, p. 153.

Duties.

SECTION 1177-26. It shall be the duty of the agricultural advisory board to co-ordinate the work of the state department of agriculture, the college of agriculture and the agricultural experiment station in such manner as to avoid unnecessary duplications and to secure harmony and unity in said institutions along all lines of work undertaken by them.

Authorized  
to confer  
with U. S.  
department of  
agriculture.

SECTION 1177-27. The agricultural advisory board may meet with officers of the United States department of agriculture for conference on matters pertaining to co-operative work between that department and agricultural institutions of the state. It may also arrange for meetings with the state board of agriculture for conference upon matters pertaining to the agricultural interests of the state.

## ADULTERATIONS

Adulterated  
and mis-  
branded  
drugs or  
food.

SECTION 5774. No person, within this state, shall manufacture for sale, offer for sale, sell or deliver, or have in his possession with intent to sell or deliver, a drug or article of food which is adulterated within the meaning of this chapter, or offer for sale, sell or deliver, or have in his possession with intent to sell or deliver, a drug or article of food which is misbranded within the meaning of this chapter. (99 v. 257 sec. 1).

CITED:

Kowenstrot v. State, 4 O. N. P. 257.

CONSTITUTIONALITY.

This section and former analogous provisions have been held to be constitutional, as being enacted in the reasonable exercise of the police power of the state: *State v. Dairy Co.*, 62 O. S. 350; *Arbuckle v. Blackburn*, 191 U. S. 405.

PURPOSE AND SCOPE.

This and the following sections have been enacted by the legislature to protect public health; and also to prevent the public from being defrauded by purchasing imitations: *White v. State*, 12 O. D. (N. P.) 659.

One who sells or delivers an adulterated article for analysis is guilty of a violation of the pure food laws: *State v. Rippeth*, 71 O. S. 85.

The sale of adulterated whisky is an offense against the pure food and drug statutes, whether it is sold as a beverage or as an article of commerce: *State v. Hutchinson*, 56 O. S. 82.

This chapter does not apply to the United States soldiers' home at Dayton. See *Thomas*, In re, 82 Fed. 304, 10 O. F. D. 237.

## SALES BY AGENTS.

The principal is bound at his peril to see that the pure food law is complied with; and he is liable for violations of such law by his employes: *Williams v. State*, 4 O. C. C. (N. S.) 193, 15 O. C. D. 673 (affirmed without report, *Williams v. State*, 69 O. S. 570).

The manager of a corporation is liable for sales made by his subordinates in violation of the pure food laws: *Bissman v. State*, *Meyer v. State*, 54 O. S. 242 (affirming *Meyer v. State*, 10 O. C. C. 226, 6 O. C. D. 477, which affirmed *Meyer v. State*, 1 O. N. P. 241, 2 O. D. (N. P.) 233).

A resident agent who acts for a non-resident principal in the sale of an adulterated article of food and the like is personally liable: *Bissman v. State*, *Meyer v. State*, 54 O. S. 242 (affirming *Meyer v. State*, etc., see above citation).

The owner of milk which is below the standard fixed by law is not liable criminally, if it is not shown that the person who made the sale was authorized by such owner to make such sale: *Diersing v. State*, 9 O. C. C. (N. S.) 214, 19 O. C. D. 469.

Where a master is under contract to deliver to the proprietor of a cheese and butter factory, pure milk, and has knowledge that the milk so delivered is to be mixed with the milk of other patrons, and entrusts the delivery to a servant who, in the course of such employment, delivers adulterated milk, the master is liable for damages necessarily and directly resulting by reason of such delivery, and it is not a defense to show that the servant without authority and purposely, and to gratify his malice towards his employer and with intent to injure him, adulterated the milk so delivered by mixing with it water, and that the master had no knowledge of such adulteration. In such case the rule of damages is compensation for the injury: *Stranahan Co. v. Colt*, 55 O. S. 398.

## KNOWLEDGE.

It is an offense to sell or offer to sell adulterated food even if the vendor is ignorant of the fact of the adulteration: *State v. Kelly*, 54 O. S. 166; *Strong v. State*, 2 O. N. P. 93, 3 O. D. (N. P.) 284.

Contra under an earlier form of the statute: *Haas v. State*, 1 O. N. P. 248, 2 O. D. (N. P.) 177.

Fraud is not presumed from the fact that a temporary injunction against inspection is obtained: *Chemical Co. v. Calvert*, 8 O. N. P. (N. S.) 361, 19 O. D. (N. P.) 571 (affirmed, without report, *State, ex rel., v. Chemical Co.*, 80 O. S. 754).

## CRIMINAL PROCEEDINGS.

For the contents and form of an affidavit charging a violation of the provisions of this chapter see *State v. Kelly*, 54 O. S. 166 (reversing *Kelly v. State*, 1 O. N. P. 238); *Mihalovitch-Fletcher Co. v. Bartlett*, 12 O. C. C. (N. S.) 160; *Emery v. State*, 3 O. N. P. 204, 5 O. D. (N. P.) 121; *Groeland v. State*, 4 O. N. P. 122, 6 O. D. (N. P.) 313.

For the penalty for violating the provisions of this chapter, see sections 12757, et seq.

A justice of the peace has not jurisdiction to hear and determine prosecutions for violations of this chapter, in any case where imprisonment is part of the penalty, without the intervention of a jury; unless a jury is waived; and such waiver must appear of record affirmatively: *Simmons v. State*, 75 O. S. 346.

It is an error to refuse evidence that defendant did not expose for sale any of the articles: *Margolius v. State*, 1 O. N. P. 346.

## EVIDENCE.

The gist of offense in a prosecution for selling improperly labeled imitation extracts is the illegal sale, and the identity of the purchaser is not an essential element of the offense. *State v. Yonker*, 63 Ohio Law Bulletin (March 11-18), 414.

Definition of the terms "drug," "food," and "flavoring extract."

SECTION 5775. The term "drug," as used in this chapter, includes all medicines for internal or external use or inhalation, antiseptics, disinfectants and cosmetics. The term "food," as used in this chapter, includes all articles used by man for food, drink, flavoring extract, confectionery, or condiment, whether simple, mixed or compound. The term "flavoring extract," as used in this chapter, includes all articles used as a flavor for foods or drinks, whether used or sold as an extract, flavor, essence, tincture or by another name. (98 v. 263 sec. 2).

Cited: State v. Walder, 83 O. C. 68.

Whiskey is a drug within the meaning of this section: State v. Hutchinson, 56 O. S. 82.

Food includes all articles used for the nourishment of human beings, including both what is ordinarily known as food and also drink; and including articles which are simple and also those which are mixed or compounded: White v. State, 12 O. D. (N. P.) 659

Samples of drugs and food for analysis.

SECTION 5776. A person manufacturing, offering or exposing for sale, or delivering to a purchaser, a drug or article of food included in the provisions of this chapter, shall furnish to a person interested or demanding it, applying to him therefor and tendering him its value, a sample therefor sufficient for the analysis of such drug or article of food. (81 v. 67 sec. 4).

This section is constitutional: Dairy Co. v. State, 183 U. S. 238, 14 O. F. D. 12 (affirming State v. Dairy Co., 62 O. S. 350).

One who sells or delivers an adulterated article for analysis is guilty for the violation of the pure food laws: State v. Rippeth, 71 O. S. 85.

If a manufacturer refuses to furnish samples for analysis, an injunction will not lie at the suit of the dairy and food commissioner to compel him to furnish such samples; but the remedy is criminal prosecution for failure to comply with the terms of such statute (see G. C. 12757): State v. Dairy Co., 62 O. S. 123.

It has been held that if the proprietor refuses to accept payment for the article furnished and accepts only because the inspector insists, this does not constitute a sale: Dinkelböhler v. State, 4 O. N. P. 96, 6 O. D. (N. P.) 99.

It is discretionary with the court before which a criminal prosecution is pending under the pure food laws to require the state to permit the defendant to have an analysis made of a portion of the alleged adulterated article: but the court has a sound judicial discretion with reference to ordering such analysis. The defendant must show that such inspection or analysis is material; that it will not impair the evidential value of the thing to be analyzed; and he must offer to have the inspection or analysis in the presence of the representative of the state; under supervision of the court; and in the presence of the expert witness of the state. If it appears that such opportunity for inspection and analysis is sought for mere curiosity or delay, it should be denied. The defendant cannot dictate what chemist shall make such analysis; but such expert is to be selected by the court: Breckinridge v. State, 3 O. N. P. 313, 4 O. D. (N. P.) 389.

What is adulteration of drugs.

SECTION 5777. A drug is adulterated within the meaning of this chapter (1) if, when sold under or by a name recognized in the ninth decennial revision of the United States Pharmacopœia or in the fourth edition of the National Formulary, it differs from the standard of strength, quality or purity laid down therein; (2) if, when sold under

or by a name not recognized in the ninth decennial revision of the United States Pharmacopœia, or the fourth edition of the National Formulary, but which is found in some other pharmacopœia, or other standard work on materia medica, it differs materially from the standard strength, quality or purity laid down in such work; (3) if its strength, quality or purity falls below the professed standard under which it is sold; (4) if it is an imitation of, or offered for sale under the name of another article; (5) if the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package; (6) if it contains any methyl or wood alcohol. (100 v. 105 sec. 3).

Since whisky is recognized in the United States Pharmacopœia, which is adopted by this statute, it is to be regarded as a drug within the meaning of this section; *State v. Hutchinson*, 56 O. S. 82.

An affidavit which charges the accused with having for sale a drug "which differed from the standard of strength laid down in said U. S. Pharmacopœia" and which does not show in what respect the said drug differed from said standard, is indefinite and insufficient: *Groenland v. State*, 4 O. N. P. 122, 6 O. D. (N. P.) 313 (affirmed without report, 39 Bull. 2).

In the absence of a specific statutory reference to a designated edition of the Pharmacopœia, a statute which adopts the Pharmacopœia as a standard refers to that edition which is in use when the statute is enacted; and a subsequent edition which adopts a higher standard is not to be applied as a standard, in the absence of a showing that such edition established the same standard as the earlier edition with reference to the drug in question: *State v. Emery*, 55 O. S. 364; *Emery v. State*, 3 O. N. P. 204.

SECTION 5778. Food, drink, confectionery or condiments are adulterated within the meaning of this chapter. (1) if any substance or substances have been mixed with it, so as to lower or depreciate or injuriously affect its quality, strength or purity; (2) if any inferior or cheaper substance or substances have been substituted wholly, or in part for it; (3) if any valuable or necessary constituent or ingredient has been wholly, or in part, abstracted from it; (4) if it is an imitation of, or is sold under the name of another article; (5) if it consists wholly, or in part, of a diseased, decomposed, putrid, infected, tainted or rotten animal or vegetable substance or article, whether manufactured or not or, in the case of milk, if it is the product of a diseased animal; (6) if it is colored, coated, polished or powdered, whereby damage or inferiority is concealed, or if by any means it is made to appear better or of greater value than it really is; (7) if it contains any added substance or ingredient which is poisonous or injurious to health; (8) if, when sold under or by a name recognized in the ninth decennial revision of the United States Pharmacopœia, or the fourth edition of the National Formulary, it differs from the standard of strength, quality or purity laid down therein; (9) if, when sold under or by a name not recognized in the ninth decennial revision of the United States Pharmacopœia, or the fourth edition of the National For-

Same as to  
food, etc.

mulary, but if found in some other pharmacopœia, or other standard work on materia medica, it differs materially from the standard of strength, quality or purity laid down in such work (10) if the strength, quality or purity falls below the professed standard under which it is sold; (11) if it contains any methyl or wood alcohol. (100 v. 105 sec. 31.)

This and analogous sections have been held to be constitutional: *Arbuckle v. Blackburn*, 113 Fed. 616, 51 C. C. A. 122, 13 O. F. D. 44.

If beer contains salicylic acid and the presence of such acid is shown to be poisonous or injurious to health if used continuously or indiscriminately, the sale of such beer without a label notifying the purchaser of the presence of such acid is unlawful: *State v. Hutchinson*, 55 O. S. 573.

The sale of oleomargarine which contains coloring matter is an offense under the pure food laws, even if such coloring matter is not of itself injurious: *State v. Ruedy*, 57 O. S. 224.

The pure food laws probably forbid the sale of coffee which is coated with a glaze of sugar and the white of egg. And if they do, they do not violate any provision of the constitution of the United States by reason of such construction: *Arbuckle v. Blackburn*, 191 U. S. 405, 14 O. F. D. 321 (dismissing appeal from *Arbuckle v. Blackburn*, 113 Fed. 616, 51 C. C. A. 122, 13 O. F. D. 44).

That such coating is not forbidden by the statute see *White v. State*, 12 O. D. (N. P.) 659.

The sale of a mixture of liquid chicory and coffee under the name of liquid coffee is unlawful: *State v. Dreher*, 55 O. S. 115.

The sale of cocoa from which the excess of oil has been removed so that the cocoa will remain in a powdered state at ordinary temperatures is not a violation of the pure food law: *Rose v. State*, 11 O. C. C. 87, 5 O. C. D. 72 (reversing *Rose v. State*, 2 O. N. P. 370, 4 O. D. (N. P.) 44).

SECTION 5779. A flavoring extract is adulterated within the meaning of this chapter (1) if any substance or substances have been mixed with it, so as to lower or depreciate or injuriously affect its quality, strength or purity; (2) if any inferior or cheaper substance or substances have been substituted wholly, or in part, for it; (3) if any valuable or necessary constituent or ingredient has been wholly, or in part, abstracted from it; (4) if it is an imitation of, or is sold under the name of another article; (5) if it is colored whereby damage or inferiority is concealed, or if it by any means is made to appear better or of greater value than it really is; (6) if it contains any added substance or ingredient which is poisonous or injurious to health; (7), if the strength, quality or purity falls below the professed standard under which it is sold; (8) if it contains any methyl or wood alcohol. (100 v. 105 sec. 3.)

Same as to  
flavoring ex-  
tracts.

Same.

SECTION 5780. A flavoring extract is also adulterated within the meaning of this chapter, if, when sold under or by any one of the following names it differs from the standard hereby fixed therefor; (1) Almond extract shall be the flavoring extract prepared from oil of bitter almonds, free from hydrocyanic acid, and shall contain not less than one per cent. by volume of oil of bitter almonds; (2) anise extract shall be the flavoring extract prepared from oil of anise, and shall contain not less than three per cent. by

volume of oil of anise; (3) celery seed extract shall be the flavoring extract prepared from celery seed or the oil of celery seed, or both, and shall contain not less than three-tenths per cent, by volume of oil of celery seed; (4) cassia extract shall be the flavoring extract prepared from oil of cassia, and shall contain not less than two per cent, by volume of oil of cassia; (5) cinnamon extract shall be the flavoring extract prepared from oil of cinnamon, and shall contain not less than two per cent. by volume of oil of cinnamon; (6) clove extract shall be the flavoring extract prepared from oil of cloves, and shall contain not less than two per cent. by volume of oil of cloves; (7) ginger shall be the flavoring extract prepared from ginger, and shall contain in each one hundred cubic centimeters the alcohol-soluble matters from not less than twenty grams of ginger; (8) lemon extract shall be the flavoring extract prepared from oil of lemon, or from lemon peel or both, and shall contain not less than five per cent. by volume of oil of lemon; (9) terpeneless extract of lemon shall be the flavoring extract prepared by shaking oil of lemon with dilute alcohol, or by dissolving terpeneless oil of lemon in dilute alcohol; and shall contain not less than two-tenths per cent. by weight of citral derived from oil of lemon; (10) nutmeg extract shall contain not less than two per cent. by volume of oil of nutmeg; (11) orange extract shall be the flavoring extract prepared from oil of orange, or from orange peel, or both, and shall contain not less than five per cent. by volume of oil of orange; (12) terpeneless extract of orange shall be the flavoring extract prepared by shaking oil of orange in dilute alcohol or by dissolving terpeneless oil of orange in dilute alcohol and shall correspond in flavoring strength to orange extract; (13) peppermint extract shall be the flavoring extract prepared from oil of peppermint or from peppermint, or both, and shall contain not less than three per cent. by volume of oil of peppermint; (14) rose extract shall be the flavoring extract prepared from otto of roses, with or without petals, and shall contain not less than four-tenths per cent. by volume of otto of roses; (15) savory extract shall be the flavoring extract prepared from oil of savory, or from savory, or both, and shall contain not less than thirty-five hundredths per cent. by volume of oil of savory; (16) spearmint extract shall be the flavoring extract prepared from oil of spearmint, or from spearmint, or both, and shall contain not less than three per cent. by volume of oil of spearmint; (17) star anise extract shall be the flavoring extract prepared from oil of star anise, and shall contain not less than three per cent. by volume of oil of star anise; (18) sweet basil extract shall be the flavoring extract prepared from oil of sweet basil, or from sweet basil, or both, and shall contain not less than one-tenth per cent. by volume of oil of sweet basil; (19) sweet majoram extract or majoram extract, shall be the flavoring extract prepared from the oil of majoram, or from marjoram or

both and shall contain not less than one per cent. by volume of oil of marjoram; (20) thyme extract shall be the flavoring extract prepared from oil of thyme, or from thyme, or both, and shall contain not less than two-tenths per cent. by volume of oil of thyme; (21) tonka extract shall be the flavoring extract prepared from tonka bean, with or without sugar or glycerine, and shall contain not less than one-tenth per cent. by weight of coumarin extracted from the tonka bean, together with a corresponding proportion of the other soluble matters thereof; (22) vanilla extract shall be the flavoring extract prepared from vanilla bean, with or without sugar or glycerine, and shall contain in one hundred cubic centimeters the soluble matters from not less than ten grams of the vanilla bean; (23) wintergreen extract shall be the flavoring extract prepared from oil of wintergreen, and shall contain not less than three per cent. by volume of oil of wintergreen. All of said flavoring extracts shall be a solution in ethyl alcohol of proper strength of the sapid and odorous principles derived from an aromatic plant or parts of the plant, and shall conform in the name to the plant used in its preparation. (100 v. 105 sec. 3.)

What constitutes misbranding of drugs.

SECTION 5784. A drug shall be misbranded within the meaning of this chapter: (1) if the package fails to bear a statement on the label of the quantity or proportion of grain or ethyl alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis, chloral hydrate, acetanilid or any derative or preparation of such substances contained therein, provided, that the provisions of this section shall not apply to the prescriptions of regular licensed physicians, dentists and doctors of veterinary medicine, nor to such drugs and preparations as are officially recognized in the ninth decennial revision of the United States Pharmacopœia, or the fourth edition of the National Formulary, and which are sold under the name by which they are so recognized; (2) if the package containing it or any label thereon bears a statement, design or device regarding it or the ingredients or substances contained therein, which is false or misleading in any particular; (3) if the package containing it or any label thereon bears or contains any statement, design or device regarding the curative or the therapeutic effect of such article or any of the ingredients or substances contained therein, which is false and fraudulent. (103 v. 137.)

For the effect of a somewhat analogous statute see *Marvin v. State*, 5 O. N. P. 209, 7 O. D. (N. P.) 204.

What is misbranding of food, etc.

SECTION 5785. Food, drink, flavoring extracts, confectionery or condiment shall be misbranded within the meaning of this chapter: (1) if the package fails to bear a statement on the label of the quantity or proportion of morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilide, or any derivative or preparation of such substances contained therein; (2) if it is labeled or branded so as to deceive or

mislead the purchaser, or purport to be a foreign product when not so; (3) if in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package; (4) in case of a flavoring extract for which no standard exists there is not printed in English, conspicuously, legibly and clearly on the label the quantity by volume of alcohol in said extract; (5) if the package containing it or a label thereon bears a statement, design or device regarding it or the ingredients or substances contained therein, which is false or misleading in any particular; provided, that this section shall not apply to mixtures or compounds recognized as ordinary articles or ingredients of articles of food or drink, if each package sold or offered for sale is distinctly labeled in words of the English language as mixtures or compounds, with the name and percentage in terms of one hundred per cent of each ingredient therein. The word "compound" or "mixture" shall be printed in letters and figures not smaller in height or width than one-half the largest letter upon any label on the package and the formula shall be printed in letters and figures not smaller in height or width than one-fourth the largest upon any label on the package and such compound or mixture must not contain any ingredient that is poisonous or injurious to health. (99 v. 258 sec 39.)

SECTION 12758. Whoever manufactures for sale, offers for sale or sells a drug, article of food, or flavoring extract which is adulterated or misbranded as the terms "drugs," "food," "flavoring extract," "adulterated" and "misbranded" are defined and described by law, or manufactures, offers or exposes for sale or delivers a drug or article of food and fails, upon demand and tender of its value, to furnish a sample thereof for analysis, shall be fined not less than twenty-five dollars nor more than one hundred dollars, and for each subsequent offense, shall be fined not less than one hundred dollars nor more than two hundred dollars or imprisoned in the county jail not less than thirty days nor more than one hundred days, or both. (81 v. 67 sec. 4; 99 v. 259 sec. 5.)

Selling adulterated or misbranded food or drug.

CITED.

State v. Rippeth, 71 O. S. 85.

#### CONSTITUTIONALITY.

The pure food laws of Ohio, G. C. section 5777, et seq., punishing the coloring, coating or polishing of an article of food, whereby damage or inferiority is concealed, are a valid exercise of the police power of the state, and do not interfere with the right of congress to regulate commerce: *Arbuckle v. Blackburn*, 113 Fed. 616, 51 C. C. A. 122, 13 O. F. D. 44.

The pure food laws are valid in so far as they apply to sales made within the state of food products manufactured there; but they cannot be enforced in the regulation of interstate commerce against the sale of oleomargarine colored to look like butter, in the original package in which it was imported from other states: *In re Worthen*, 6 O. F. D. 683, 58 Fed. 467; see also *State, ex rel., v. Dairy Co.* (affirmed 183 U. S. 238, 14 O. F. D. 12).

## SALE.

Under a former statute a complaint charging a principal with a sale of impure food is insufficient where the sale, if made at all was made by an agent: *Heider v. State*, 4 O. D. (N. P.) 227.

It is not a sale where a dealer accepts payment for an article only after persuasion by a food inspector who is procuring such article for chemical analysis: *Dinkelbuhler v. State*, 6 O. D. (N. P.) 99.

Since the offense which is defined by the pure food law consists in making an illegal sale of the articles designated in the law, the identity of the purchaser is not an essential element of the crime; and an affidavit which charges a violation of the pure food law is not rendered invalid by the fact that it charges that the sale was made to a certain person as agent of the purchaser instead of charging that such sale was made to such purchaser: *Yunker v. State*, 8 Ohio App. 157, 28 O. C. A. 345, 29 O. C. D. 414.

## ADULTERATED FOOD.

To offer for sale, as an article of food, liquid chicory and coffee, as "liquid coffee," is an offense punishable by the pure food laws of the state: *State v. Dreher*, 55 O. D. 115.

A sale of beer as food, containing saliclic acid in any quantity, without a label in the package notifying the purchasers that it contains such an ingredient, is, when found to be poisonous or deleterious to health by its continuous or indiscriminate use, an offense against the pure food laws of the state: *State v. Hutchinson*, 55 O. S. 573.

One who sells or delivers oleomargarine containing coloring matter to any person interested or demanding the same for analysis, as provided in this section and also in G. C. 5776, may be prosecuted therefor under G. C. Section 12734: *State v. Rippeth*, 71 O. S. 85.

"Breakfast cocoa," in the preparation of which the manufacturer took the cocoa bean and extracted a considerable portion of the oil therefrom, and put the products thus prepared in packages for sale, is not a violation of G. C. section 5778, providing "that an article of food shall be deemed to be adulterated if any valuable or necessary constituent or ingredient has been wholly or in part extracted from it": *Rose v. State*, 11 O. C. C. 87, 5 O. C. D. 72.

Roasted coffee which is coated or glazed with a mixture of sugar and eggs, put up in packages distinctly labeled with the name and per cent. of each ingredient therein, and the same is not injurious to health is within the proviso contained in section 5778, and a sale of the same is not unlawful: *White v. State*, 12 O. D. (N. P.) 659.

## GUILTY KNOWLEDGE.

It is no defense that the accused is ignorant of the adulteration of the article which he sells or offers for sale: *State v. Kelly*, 54 O. S. 166; *Contra: Haas v. State*, 2 O. D. (N. P.) 177.

In prosecutions under the pure food laws, guilty knowledge is not an essential element of the crime: *Strong v. State*, 3 O. D. (N. P.) 284.

## PROCEDURE.

For jurisdiction of police judge, mayor and justices of the peace in prosecution under the pure food laws, see G. C. section 13423 et. seq. and *State v. Peters*, 67 O. S. 494.

An affidavit charging a violation of this section need not aver that an adulterated article of food is to be used as human food: *State v. Kelly*, 54 O. S. 166.

An affidavit which charges one with having on sale subacetate of lead differing "from the standard of strength laid down in the United States Pharmacopœia," but not stating whether above or below the standard required, is insufficient for indefiniteness: *State v. Groenland*, 1 O. S. U. 725.

An affidavit based upon paragraph seven of G. C. section 5778, is fatally defective if it does not allege that the article sold contained (1) any added substance or ingredient which was poisonous, or (2) any added substance or ingredient injurious to health: *Strong v. State*, 3 O. D. (N. P.) 284.

Under the statute prior to G. C. section 5777 et seq. defining adulterated foods, it was held that the edition of the United States Pharmacopœia referred to was the one in general use when the statute was enacted, that of 1880; and the sale of a drug equal to the standards of strength, quality and purity laid down by the edition of 1880, but not equal to that required by a later edition, was not a violation of this section. *State v. Emery*, 55 O. S. 364.

SECTION 12759. A person found guilty of manufacturing, offering for sale or selling an adulterated article of food or drug, as described in the next preceding section, shall pay all necessary costs and expenses incurred in inspecting and analyzing such adulterated article. (99 v. 259 sec. 5).

Additional  
penalty.

SECTION 12760. Whoever sells, offers for sale or has in his possession with intent to sell, diseased, corrupted, adulterated or unwholesome provisions without making the condition thereof known to the buyer, shall be fined not more than fifty dollars or imprisoned twenty days, or both. (R. S. sec. 6928).

Selling, etc.,  
unwholesome  
provisions.

This section, which is a criminal statute relating to the sale of unwholesome provisions, in no way changes the established rules of evidence or the proof required in cases where damages are sought on account of the sale and delivery of food products in a condition unfit for use: *Keen v. Bachelor*, 4 Ohio App. 350, 23 O. C. C. (N. S.) 129, 26 O. C. D. 102.

If the evidence shows that one who has purchased eggs knows at the time of their delivery to him that the eggs are damp, and he does not object thereto, and if such condition of the eggs would tend to cause the eggs to decay more rapidly, the buyer is placed upon inquiry, and should make inspection. If he does not make such inspection, but ships them to another point, the fact that four days later they are found to be spoiled and decayed, does not render the seller liable upon his implied warranty: *Keen v. Bachelor*, 4 Ohio App. 350, 23 O. C. C. (N. S.) 129, 26 O. C. D. 102.

## VINEGAR

SECTION 5786. No person shall manufacture, offer or expose for sale, sell or deliver, or have in possession with intent to sell or deliver, vinegar not in compliance with the provisions of this chapter. Vinegar shall be made wholly from the fruit or grain from which it purports, or is represented, to be made and shall not contain a foreign substance or less than four per cent. by weight of absolute acetic acid. (99 v. 28, 29 secs. 1, 2).

Vinegar.

This section is a valid exercise of the police power of the state and is not unconstitutional: *Weller v. State*, 53 O. S. 77 [affirming *Weller v. State*, 8 O. C. C. 467, 6 O. C. D. 812, which affirmed *Weller v. State*, 1 O. D. (N. P.) 196]; *Williams v. McNeal*, 7 O. C. C. 280, 4 O. C. D. 596.

The sale of vinegar, which has been passed through roasted malt for the purpose of giving the vinegar color, aroma and flavor, and not for the purpose of adding any substantial ingredient

thereto, the vinegar without such treatment being colorless, was held to be invalid under a statute which forbade the addition of artificial coloring matter: See citations under preceding note.

Cider or  
apple  
vinegar.

SECTION 5787. Vinegar manufactured, offered or exposed for sale, sold or delivered, or in the possession of a person with intent to sell or deliver, under the name of cider vinegar, apple vinegar, or any compounding of the word "cider" or "apple" as the name or part of the name of vinegar, shall be the product made by the alcoholic and subsequent acetous fermentations of the juice of apples, and shall not contain any foreign substance, drugs or acids, and is laevo-rotatory. It shall contain not less than four grams of acetic acid, not less than one and six-tenths grams of apple solids of which not more than fifty per cent. are reducing sugars, and not less than twenty-five hundredths grams of apple ash in one hundred cubic centimeters at a temperature of twenty degrees centigrade. The water-soluble ash for one hundred cubic centimeters, at a temperature of twenty degrees centigrade, of the vinegar shall contain not less than ten milligrams of phosphoric acid ( $P_2O_5$ ) which shall require not less than thirty cubic centimeters of decinormal acid to neutralize its alkalinity. (99 v. 28, sec. 1).

Wine or  
grape  
vinegar.

SECTION 5788. Vinegar manufactured, offered or exposed for sale, sold or delivered or in possession of a person with intent to sell or deliver, under the name of wine vinegar, or grape vinegar, shall be the product made by the alcoholic and subsequent acetous fermentations of the juice of grapes, and shall contain in one hundred cubic centimeters, at a temperature of twenty degrees centigrade, not less than four grams of acetic acid, not less than one gram of grape solids and not less than thirteen hundredths grams of grape ash. (99 v. 28, sec. 1).

Malt vinegar.

SECTION 5789. Vinegar manufactured, offered or exposed for sale, sold or delivered or in the possession of a person with intent to sell or deliver, under the name of malt vinegar shall be the product made by the alcoholic and subsequent acetous fermentations, without distillation, of an infusion of barley malt or cereals whose starch has been converted by malt, is dextro-rotary, and shall contain in one hundred cubic centimeters, at a temperature of twenty degrees centigrade, not less than four grams of acetous acid, not less than two grams of solids, and not less than two-tenths grams of ash. The water-soluble ash from one hundred cubic centimeters, at a temperature of twenty degrees centigrade, of the vinegar shall contain no less than nine milligrams of phosphoric acid ( $P_2O_5$ ) which shall require not less than four cubic centimeters of decinormal acid to neutralize its alkalinity. (99 v. 28 sec. 1).

Distilled  
vinegar.

SECTION 5790. Vinegar manufactured, offered or exposed for sale, sold or delivered or in the possession of a person with intent to sell or deliver, under the name of

distilled vinegar, shall be the product made wholly or in part by the acetous fermentation of dilute distilled alcohol and shall contain in one hundred cubic centimeters, at a temperature of twenty degrees centigrade, not less than four grams of acetic acid, and shall be free from coloring matter; added during, or after distillation and from coloring other than that imparted to it by distillation. Vinegar made wholly or in part from distilled liquor shall be branded "distilled vinegar," and free from coloring matter, added during or after distillation, and from color other than that imparted to it by distillation. (99 v. 28, 29 secs. 1, 2).

SECTION 5791. Vinegar made by fermentation and oxidation without the intervention of distillation shall be branded "fermented vinegar" with the name of the fruit or substance from which it is made. Fermented vinegar, not otherwise provided for in this chapter and not being distilled vinegar as defined in the next preceding section, shall contain not less than two per cent, by weight, upon full evaporation at the temperature of boiling water, of solids, contained in the fruit or grain or substance from which such vinegar is fermented, and not less than two and one-half tenths of one per cent. ash or mineral matter, the product of the material from which such vinegar is manufactured. (99 v. 29 sec. 2.)

Fermented  
vinegar.

SECTION 5792. A person shall not manufacture for sale, offer for sale, or have in his possession with intent to sell, vinegar found upon proper test to contain a preparation of lead, copper, sulphuric or other mineral acid, or other ingredients injurious to health. The head of a cask, barrel, package or keg containing vinegar shall be branded with the name and residence of the manufacturer and conform to the provisions of the next two preceding sections. (92 v. 100 sec. 3).

Injurious in-  
gredients in  
vinegar;  
brands.

SECTION 5793. A person making or manufacturing cider vinegar, not a domestic manufacturer of cider or cider vinegar, shall brand on each head of each cask, barrel or keg containing such vinegar, the name and residence of the manufacturer, the date when manufactured, and the words "cider vinegar." Vinegar shall not be branded "fruit vinegar" unless it is made wholly from apples, grapes or other fruits. (93 v. 105 sec. 4).

Brands on  
casks of cider  
vinegar.

SECTION 5794. A farmer may manufacture in any one year, not more than twenty-five barrels of pure cider or fruit vinegar for sale. Such vinegar, so manufactured, must be branded "domestic cider vinegar," with the name of such farmer and date of manufacture. (93 v. 185 sec. 4).

Manufacturing  
farmer.

SECTION 12774. Whoever manufactures for sale, sells, delivers, offers or exposes for sale, or has in his possession with intent to sell or deliver, vinegar not made in compliance with law, or contained in packages not branded in

Vinegar.

compliance with law, or violates any provision of law relating to vinegar, adulterated vinegar, or "fermented" or "distilled" vinegar, shall be fined not less than fifty dollars, nor more than one hundred dollars or imprisoned not less than thirty days nor more than one hundred days, or both, and pay all necessary costs and expenses incurred in inspecting and analyzing such vinegar. (92 v. 100 sec. 4; 93 v. 185 sec. 4).

Where in the manufacture of vinegar, low wine, formed from fermented grain is, previously to its acetification, passed through roasted malt, not for the purpose of adding any substantial ingredient to the vinegar, but for the purpose of giving it color as well as aroma and flavor, and without this treatment it would be colorless, the vinegar so produced contains artificial coloring matter within the meaning of G. C. section 5786 et seq., and its possession for the purpose of sale is an offense: *Weller v. State*, 53 O. S. 77.

The manager of a mercantile corporation may be prosecuted, even though the adulterated article is sold or offered for sale by an agent of such corporation and the offense is triable in the county in which such article is sold or offered for sale: *Meyer v. State*, 54 O. S. 242.

## WINES AND LIQUORS

Adulterated  
wine.

SECTION 5795. Liquors denominated as wine, or, if used as beverage, by any other name or title, containing alcohol not produced solely by the fermentation of pure undried grape juice, or which are compounded with distilled spirits or other liquors, preserved fruit juices, compounded with substances not produced from undried fruit, intended to be used as beverages, wines which contain, or in the production or manner of manufacture of which there has been used, glucose and crystallized grape or starch sugar, cider, or pomace of grapes out of which the juice has been extracted and known as grape cheese, and wines, imitation of wines, or other beverages produced from fruit into which carbonic acid has been artificially injected, or containing alum, baryta, salts, caustic lime, carbonate of soda, carbonate of potash, carbonic acid or salts of lead, salicylic acid or antiseptic or coloring matter other than that produced from undried fruits or pure sugar, or a foreign substance injurious to health, shall be designated as "adulterated wine." This section shall not mean that "compounded wine," as defined and described in section fifty-eight hundred, shall be deemed to be adulterated wine. (88 v. 231 sec 1).

It is not necessary that the affidavit should allege that the article was sold as human food, or so used as such: *State v. Kelly*, 54 O. S. 166 (reversing *Kelly v. State*, 1 O. N. P. 238, 2 O. D. (N. P.) 239).

The fact that the accused did not know that the article, which he was selling was adulterated is not a defense: *State v. Kelly*, 54 O. S. 166 (reversing *Kelly v. State*, 1 O. N. P. 238, 2 O. D. (N. P.) 239), see, to the same effect, *Altschul v. State*, 8 O. C. C. 214, 4 O. C. D. 402 (cited and approved in *State v. Fromer*, 7 O. N. P. 172, 6 O. D. (N. P.) 374).

The local agent of a non-resident principal who sells an article in violation of this and the following section may be prosecuted and tried in the county where he sells the adulterated article or offers the same for sale: Meyer v. State, 54 O. S. 242 (affirming Meyer v. State, 10 O. C. C. 226, 6 O. C. D. 477, which affirmed Meyer v. State, 1 O. N. P. 241, 2 O. D. (N. P.) 233)

SECTION 5796. The term "wine" means the fermented juice of undried grapes. The addition of pure white or crystallized sugar to perfect the wine, or using ingredients necessary solely to clarify and refine it which are not injurious to health, shall not be adulterations. Such wine shall contain at least seventy-five per cent. of pure grape juice, and shall not contain artificial flavoring. (88 v. 232 sec. 3).

"Wine" defined.

SECTION 5797. Wine, as defined in the next preceding section, shall be known as "wine," and shall be stamped, branded, labeled and sold as "wine", in a like manner as is provided in section fifty-seven hundred and ninety-nine, in case of pure wine, except the words in this case, shall be "wine" without the prefix "pure", and the provisions of such section, as far as applicable, shall govern the manufacture and sale of "wine" as defined in such preceding section. A person selling such wine, in the invoice thereof, shall plainly state and designate it as "wine" without using the prefix "pure". (88 v. 232 sec. 3.)

Branding and sale thereof.

SECTION 5798. The term "pure wine" means the fermented juice of undried grapes, without the addition thereto of water, sugar, or foreign substance. Such wine shall be known as "pure wine", and shall be stamped, branded, labeled, designated and sold as "pure wine", and the name and kind of wine, the locality where such wine is made, and the name of the manufacturer, may also be added: (88 v. 231 sec. 2.)

"Pure wine" defined.

SECTION 5799. It shall be unlawful to affix a stamp, brand or label containing the words "pure wine," either alone or with other words, on a vessel, package, bottle or other receptacle containing a substance other than pure wine as defined in the next preceding section, or to prepare or use on a vessel, package, bottle or other receptacle containing liquid, an imitation or counterfeit of such stamp, label or brand, or a stamp, label or brand of such form and appearance as to deceive a person, or cause it to be supposed that the contents thereof are pure wine, or to use a vessel, package, bottle or other receptacle having such stamp, brand or label affixed thereon, except for pure wine as in such section defined. If the name of the manufacturer is added, the contents shall be of his make, providing it is pure wine. A person selling such wine, in the invoice thereof, shall plainly state and designate it as "pure wine." (88 v. 231 sec. 2.)

Branding and sale thereof.

"Compounded wine" defined.

SECTION 5800. The term "compounded wine" means wine containing less than seventy-five per cent. of pure, undried grape-juice, and otherwise pure. Wines containing alcohol or other distilled spirits not produced by the natural fermentation of pure undried grapes shall be known as "compounded wine," and be branded, marked, labeled and sold as such, and the name of such wine may be added, or such wine shall be branded, labeled and marked by using the word "compounded" next preceding the name of such wine, as "compounded sweet catawba," or "compounded port wine," or the like. An addition of pure distilled spirits, not to exceed eight per cent. of its volume, shall not be an adulteration thereof. (88 v. 232 sec. 4.)

Branding and sale thereof.

SECTION 5801. Upon both ends of each package, barrel or other receptacle of compounded wine, containing more than three gallons, shall be stamped in black printed letters at least one inch high and of proper proportion, the words "compounded wine" or the name of such wine, preceded by the word "compounded," as provided in the next preceding section. Upon each package or other receptacle containing more than one quart and up to three gallons shall be stamped in plain printed black letters, at least one-half inch high, and of proper proportion, the words "compounded wine," or the name of such wine, preceded by the word "compounded," as in such section provided. Upon each package, bottle, or other receptacle of one quart or less shall be placed a label securely pasted on which the words "compounded wine," or the name of the wine, preceded by the word "compounded," shall be plainly printed in black letters at least one-fourth of an inch high and of proper proportion. Should such package or other receptacles be enclosed in a larger package, as a box, barrel, case or basket, such larger package shall receive the stamp "compounded wine" or the name of such wine preceded by the word "compounded," the letters to be the size according to the amount of such wine contained in such larger package. A person selling wine as defined by the next preceding section, shall plainly state and designate such wine, in the invoice thereof, as "compounded wine." (88 v. 232 sec 4.)

Penalties under last six sections.

SECTION 5802. A person who sells, offers for sale, manufactures or causes to be manufactured with intent to sell, wine stamped, labeled, branded or designated as "pure wine," either by including the word "pure" with "wine" alone or in connection with other words, which is not "pure wine" as in this chapter defined, or wine stamped, labeled, branded or designated as "wine" which is not wine as in this chapter defined, or violates a provision of sections fifty-seven hundred and ninety-six, fifty-seven hundred and ninety-seven, fifty-seven hundred and ninety-eight and fifty-seven hundred and ninety-nine, or sells, offers for sale, manufactures or causes to be manufactured with intent to

sell, wine of the kind and character described in the next two preceding sections, not stamped, marked or labeled after the matter therein prescribed, or which is falsely stamped, marked or labeled, shall be liable to a penalty of one-half dollar for each gallon thereof sold, offered for sale, or manufactured with intent to sell or offer for sale. (86 v. 98 sec. 5.)

SECTION 5803. Penalties imposed by the next preceding section may be recovered with costs of action by a person in his own name, before a justice of the peace in the county where such violation was committed, if the amount does not exceed the jurisdiction of such justice. Such penalties may be recovered in a like manner in any court of record in the state, but on recovery in such case of a sum less than fifty dollars, the plaintiff shall only be entitled to costs equal to the amount of such recovery. (86 v. 98 sec. 5.)

How penalties recovered.

SECTION 5804. Prosecuting attorneys shall prosecute actions in the name of the state of Ohio, for the recovery of the penalties allowed in section fifty-eight hundred and two upon receiving proper information thereof; and, in such action, one-half of the penalty recovered shall be paid to the persons giving the information upon which such action is brought, and the other half to the treasury of the county in which action is brought, within thirty days after its collection, which shall be placed to the credit of the poor fund of the village, city or township in which the cause of action arose. A judgment recovered in pursuance of this chapter, may be collected and enforced by like means and in a like manner as judgments in other cases. (86 v. 98 sec. 5.)

Where penalties paid.

SECTION 5805. This chapter shall not apply to medicated wines put up and sold for medical purposes only; or to currant wine or other wines made from fruits other than grapes, which are plainly labeled, branded or designated and sold, or offered for sale under names including the word "wine," and stating distinctly the fruit from which they are made, as "gooseberry wine," "elderberry wine," or the like. (86 v. 90 sec. 6.)

Exceptions.

SECTION 12767. Whoever manufactures or causes to be manufactured with intent to sell, or sells or offers to sell adulterated wine as defined and described by law, shall be fined not less than two hundred dollars nor more than one thousand dollars or imprisoned in the county jail not less than thirty days nor more than six months, or both, and shall be liable to a penalty of one dollar for each gallon thereof sold, offered for sale or manufactured with intent to sell. (88 v. 231 sec. 1.)

Manufacture or sale of adulterated wine.

One who sells impure and adulterated wine is subject to fine, although at the time of the sale he is agent of a principal who resides without the state: *Meyer v. State*, 54 O. S. 242.

Contra: *Altschul v. State*, 8 O. C. C. 214, 4 O. C. S. 402.

An affidavit charging an "unlawful sale of a certain quantity of wine in a package containing about twenty-six gallons as and for blackberry wine, a certain compound and mixture consisting of wine, sugar, water, alcohol, salicylic acid and aniline red," is sufficient: *Meyer v. State*, 10 O. C. C. 286, 6 O. C. D. 477 (affirmed 54 O. S. 242).

Same a  
nuisance.

SECTION 12768. Such adulterated wine or beverage shall be a public nuisance and forfeited to the state and be summarily seized and destroyed by any health officer, marshal, constable or sheriff within whose jurisdiction it is found, and the reasonable expense of such seizure and destruction shall be paid out of the county treasury in a like manner and amount as costs in criminal cases where the state fails to convict. (88 v. 231 sec. 1.)

Selling "com-  
pounded wine"  
improperly  
stamped.

SECTION 12769. Whoever sells, offers for sale, manufactures or causes to be manufactured with intent to sell, a wine of the kind and character described and defined by law to be "compounded wine", which is not stamped, branded, marked or labeled in the manner prescribed by law, or which is falsely stamped, branded, marked or labeled or violates any provisions of law with reference to "compounded wine," shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned in the county jail not less than thirty days nor more than six months, or both, and in addition thereto shall be liable to a penalty of one-half dollar for each gallon thereof sold, offered for sale or manufactured with intent to sell or offer for sale. (86 v. 98 sec. 5; 88 v. 232 sec. 4.)

Improper use  
of words  
"pure wine."

SECTION 12770. Whoever sells, offers for sale, manufactures or causes to be manufactured with intent to sell, a wine stamped, labeled, branded or designated as "pure wine," either by including the word "pure" with "wine" alone or in connection with other words, which is not "pure wine" as defined and described by law, or which is not stamped, marked, branded or labeled in the manner prescribed by law, or which is falsely stamped, marked or labeled or violates any provision of law relating to "pure wine," shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned in the county jail not less than thirty days nor more than six months, or both, and, in addition thereto shall be liable to a penalty of one-half dollar for each gallon thereof sold, offered for sale, or manufactured with intent to sell or offer for sale. (86 v. 98 sec. 5.)

Improper use  
of word  
"wine."

SECTION 12771. Whoever sells, offers for sale, manufactures or causes to be manufactured with intent to sell, wine stamped, labeled, branded, or designated as "wine" but which is not wine as defined and described by law, or which is not stamped, marked or labeled in the manner prescribed by law, or which is falsely stamped, marked or labeled, or violates any provisions of law relating to "wine", shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned in the county jail

not less than thirty days nor more than six months, or both, and, in addition thereto, shall be liable to a penalty of one-half dollar for each gallon thereof sold, offered for sale or manufactured with intent to sell or offer for sale. (86 v. 98 sec. 5; 88 v. 232 sec. 3.)

SECTION 12772. Whoever adulterates wine made or juice expressed from grapes grown within this state by mixing therewith a drug, chemical, cider, whisky or other liquor, or sells, or offers to sell such adulterated wine or grape juice knowing it to be adulterated, shall be fined not less than fifty dollars nor more than three hundred dollars. (R. S. sec. 7081.)

Adulterated domestic wine.

One who sells impure and adulterated wine is subject to fine, although at the time of the sale he is agent of a principal who resides without this state: Meyer v. State, 54 O. S. 242.

The manager of a mercantile corporation may be prosecuted, even though the adulterated article is sold or offered for sale by an agent of such corporation, and the offense is triable in the county in which such article is sold or offered for sale: Meyer v. State, 54 O. S. 242.

Guilty knowledge of the adulterated character of the wine is not an essential element of the offense of selling it: Altschul v. State, 8 O. C. C. 214, 4 O. C. D. 402.

Ignorance of the adulterated character of the article sold is not a defense: State v. Kelly, 54 O. S. 242.

SECTION 12773. Whoever puts adulterated liquor into a barrel, cask or other vessel having the private stamp, brand, wrapper, label or trade mark usually affixed by a maker of wine from grapes grown within this state, for the purpose of deceiving another by the sale thereof, shall be fined not more than one hundred dollars or imprisoned not less than three months nor more than twelve months, or both. (R. S. Sec. 7073.)

Using vessel with private stamp for wine.

SECTION 12675. Whoever uses an active poison in the manufacture or preparation of intoxicating liquor or sells intoxicating liquor so manufactured or prepared, shall be imprisoned in the penitentiary not less than one year nor more than five years. (R. S. Sec. 7083.)

Manufacturing or selling poisoned liquors.

SECTION 12676. Whoever for the purpose of sale, adulterates spirituous, alcoholic or malt liquor used or intended for drink or medical or mechanical purposes, with cocculus indicus, vitrol, grains of paradise, opium, alum, capsicum, copperas, laurel water, log wood, Brazilwood, cochineal, sugar of lead, aloes, glucose, tannic acid, or any other substance which is poisonous or injurious to health, or with a substance not a necessary ingredient in the manufacture thereof, or sells, offers or keeps for sale liquors so adulterated, shall be fined not less than twenty dollars nor more than one hundred dollars or imprisoned not less than twenty days nor more than sixty days or both. (R. S. Sec. 7082.)

Poisonously adulterated liquors.

For similar statute, see G. C., section 13213.

The provisions of this section relating to the sale of adulterated liquors are not limited in their application to sales by drug-

gists and pharmacists, nor to sales for medicinal or pharmaceutical use; and a saloon keeper who sells whisky below the standard of alcoholic strength laid down in the United States Pharmacopœia, has violated this section: *State v. Hutchison*, 56 O. S. 82.

An indictment charging the sale of adulterated wine must allege that the wine was sold as a beverage: *Vester v. State*, 1 O. N. P. 240.

Costs and expenses.

SECTION 12677. In addition to the penalties provided in the next preceding section, a person convicted thereunder shall pay all necessary costs and expenses incurred in inspecting and analyzing liquors so adulterated, sold, kept or offered for sale. (R. S. Sec. 7082.)

Putting adulterated liquors in branded packages.

SECTION 13211. Whoever puts adulterated liquor into a barrel, cask or other vessel, branded or marked "pure" by an inspector in this state or knowingly sells or offers such liquor for sale in packages so branded, shall be imprisoned in the penitentiary not more than twelve months. (R. S. Sec. 7074.)

Failing to properly brand packages of liquor.

SECTION 13212. Whoever, manufacturing and selling intoxicating liquor, fails to brand on each package thereof the name of the person or company manufacturing, rectifying or preparing it, and the words "containing no poisonous drug or other added poison," shall be fined not more than one thousand dollars and imprisoned not less than one month nor more than six months. (R. S. Sec. 6040.)

Cited: *Males v. Lowenstein*, 10 O. S. 512.

Adulterated liquors.

SECTION 13213. Whoever adulterates spirituous or alcoholic liquor, except for medicinal or mechanical purposes, by mixing a substance with it or sells or offers such liquor for sale, knowing it to be so adulterated, shall be fined not less than one hundred dollars, nor more than five hundred dollars, and imprisoned not less than ten days nor more than thirty days. (R. S. Sec. 6950.)

In a prosecution for selling adulterated wines, an affidavit that does not allege that the liquor was sold for use as a beverage is insufficient: *Vester v. State*, 1 O. N. P. 250, 2 O. D. (N. P.) 170.

Guilty knowledge is not an essential element of the crime of selling adulterated wine under G. C. 12767; *Altschul v. State*, 8 O. C. C. 214, 4 O. C. D. 402.

Whiskey is recognized as a drug in the United States Pharmacopœia, and a sale of adulterated whiskey is an offense under G. C. section 12758, though it be sold as a beverage or commercial commodity and by one who is neither druggist nor pharmacist: *State v. Hutchinson*, 55 O. S. 82.

Selling uninspected liquors.

SECTION 13214. Whoever sells or offers to sell spirituous liquor, not inspected as provided by law, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than thirty days. R. S. Sec. 4330.)

Cited: *State v. Hutchinson*, 56 O. S. 82.

Any information founded upon this section must allege generally that the liquors sold were not inspected, and it is not sufficient to aver that they were not inspected in the county where sold,

and that the cask containing them did not have the inspector's brand of any other county: *Woodworth v. State*, 4 O. S. 487.

On the trial of an information under this section the state is bound to give some evidence in support of the negative averment that the liquor sold was not inspected: *Cheadle v. State*, 4 O. S. 477.

## DAIRY PRODUCTS

### Milk and Cream

SECTION 12716. In all prosecutions under this chapter, if milk is shown upon analysis to contain more than eighty-eight per cent. of watery fluid, or to contain less than twelve per cent. of solids or three per cent. of fats, it shall be deemed to be adulterated.\* (97 v. 119 sec. 4.)

Definition of adulterated milk.

The police power of the state is properly exercised in the prevention of deception in the sale of dairy products and in the protection of the health of the people and it is within the scope of this power to regulate the manufacture and sale of articles of food, even though the right to manufacture and sell such articles is a natural right guaranteed by the constitution: *State, ex rel., v. Capital City Dairy Co.*, 62 O. S. 350 (affirmed by *Capital City Dairy Co. v. Ohio*, 183 U. S. 238, 14 O. F. D. 12).

Milk containing 10.61 per cent. of solids, and no more, is adulterated milk: *State v. Smith*, 69 O. S. 196.

It is sufficient to sustain a conviction in a prosecution for violation of the statutes regulating the sale of milk, if the state prove that the milk sold contained less than the required amount of fats or solids, without showing any adulteration of it, or addition to it of water or other substance, or that the cows from which the milk came were diseased or sick: *Unkrich v. State*, 16 O. C. C. (N. S.) 287.

SECTION 12716-1. Cream shall consist of that portion of milk, rich in milk fat, which rises to the surface of milk on standing, or is separated from it by centrifugal force. It shall contain eighteen per cent. of milk fat. Whipping cream is cream which contains not less than thirty per cent. of milk fat. The word cream or any combination or association of the word cream, shall not be used as a name or part of a name of any imitation of, or substitute for cream or milk or skim-milk mixture of less than eighteen per cent. milk fat in connection with the sale of such imitation or substitute, or in any hotel, restaurant or place where cream is sold, delivered or served. (109 v. 359.)

Cream and whipping cream.

SECTION 12716-2. Whoever sells, exchanges, delivers or has in his custody or possession with intent to sell or exchange, or exposes or offers for sale or exchange cream or whipping cream which does not conform with the requirements in section one of this act, and whoever uses the word cream or any combination or association of the word cream in violation of the provisions of section one of this act shall be fined not less than fifty dollars nor more than two hundred dollars; and for a second offense shall be fined not less than one hundred dollars nor more than three hundred dollars, or imprisoned in the jail or work-house not less than thirty days nor more than sixty days. (109 v. 359.)

Sale of adulterated cream, or whipping cream.

Sale of  
adulterated  
milk.

SECTION 12717. Whoever sells, exchanges, or delivers, or has in his custody or possession with intent to sell or exchange, or exposes or offers for sale or exchange, adulterated milk, or milk to which water or any foreign substance has been added, or milk from cows fed on wet distillery waste or starch waste, or from cows kept in a dairy or place which has been declared to be in an unclean or unsanitary condition by certificate of any duly constituted board of health or duly qualified health officer within the county in which said dairy is located, or from diseased or sick cows, shall be fined not less than fifty dollars nor more than two hundred dollars; and, for a second offense, shall be fined not less than one hundred dollars nor more than three hundred dollars, or imprisoned in the jail or workhouse not less than thirty days nor more than sixty days. (39 v. 239 sec. 1.)

#### CONSTITUTIONALITY.

The act to prevent deception in the sale of dairy products to preserve the public health is constitutional: *Holtgreive v. Ohio*, 5 O. D. (N. P.) 166.

The provisions of this section forbidding the sale of milk from cows fed on wet distilling waste are not unreasonable and the act is constitutional: *Herzog v. State*, 9 O. N. P. (N. S.) 349, 20 O. D. (N. P.) 458.

The police power of the state is properly exercised in the prevention of deception in the sale of dairy products, and in the protection of the health of the people, and it is within the scope of this power to regulate the manufacture and sale of articles of food, even though the right to manufacture and sell such articles is a natural right guaranteed by the constitution: *State, ex rel., v. Capital City Dairy Co.*, 62 O. S. 350 (affirmed by *Capital City Dairy Co. v. Ohio*, 183 U. S. 238, 14 O. F. D. 12).

#### ELEMENTS OF THE OFFENSE.

The sale of milk containing 10.61 per cent. of solids, and no more, is punishable under this section, and the affidavit need not allege that milk is an article of human food: *State v. Smith*, 69 O. S. 196.

Where a boy, who is left in temporary charge of a milk wagon, without any authority to sell milk, without the knowledge of the owner, sells milk from cans which contained the supply intended for customers, which milk contains only 10.63 per cent. of solids, the owner cannot be prosecuted under this section: *Diersing v. State*, 9 O. C. C. (N. S.) 214.

#### PROSECUTION.

Unless an affidavit charges the particular sale to be a second or subsequent offense, imprisonment cannot be imposed as a part of the punishment, and a justice of the peace with whom the affidavit is filed has jurisdiction to try the accused without the intervention of a jury: *Inwood v. State*, 42 O. S. 186, approved and followed: *State v. Smith*, 69 O. S. 196.

An affidavit charging the defendant with keeping for sale an article made "by compounding with and adding to milk, cream or butter, animal fats or animal or vegetable oils" is insufficient since it alleges different offenses: *Ryan v. State*, 5 O. C. C. 486, 3 O. C. D. 238.

A threatened prosecution of milk dealers to whom distillery waste is sold will not be enjoined: *Distilling Co. v. Brown*, 8 O. N. P. (N. S.) 105, 19 O. D. (N. P.) 661.

For the civil liability of the master for foreign substances placed in the milk by a servant, see *Stranaham Co. v. Colt*, 55 O. S. 398.

SECTION 12718. For a subsequent offense, a person violating the next preceding section shall be fined fifty dollars and imprisoned in the jail or workhouse not less than sixty days nor more than ninety days. (99 v. 239 sec. 1.)

Penalty for subsequent offense.

See note under G. C., section 12717.

Unless such affidavit charges the particular sale to be a second or subsequent offense, imprisonment cannot be imposed as a part of the punishment, and a justice of the peace with whom the affidavit is filed, has jurisdiction to try the accused without the intervention of a jury. *Inwood v. State*, 42 O. S. 156, approved and followed. *Mandamus* will lie to compel the exercise of such jurisdiction: *State, ex rel., v. Smith*.

SECTION 12719. Whoever sells, exchanges, delivers or has in his custody or possession with intent to sell or exchange, or exposes or offers for sale as pure milk, any milk from which the cream or part thereof has been removed, shall be fined not less than fifty dollars nor more than two hundred dollars. For a second offense he shall be fined not less than one hundred dollars nor more than three hundred dollars or imprisoned in the jail or workhouse not less than thirty days nor more than sixty days, and, for a subsequent offense, shall be fined fifty dollars and imprisoned in the jail or workhouse not less than sixty days nor more than ninety days.

Misrepresentation as to pure milk.

The provisions of this chapter shall not be construed to prohibit the sale, exchange or delivery or having in custody or possession with intent to sell, exchange or delivery, standardized milk, which is milk of which the original fat content has been changed by partial skimming or by the addition of skimmed milk, cream or milk rich in fat, and which contains not less than three and one-half per cent of milk fats and twelve per cent total solids, if the can or vessel containing such milk be labeled standardized milk and the percentage of butter fat contained in such milk or in unstandardized milk sold at retail be plainly stated on the label permitting a two-tenths of one per cent tolerance on one or more bottles, cans or vessels, but an average of twenty-five bottles, vessels or cans shall contain the required stipulated percentage of fat. (109 v. 550.)

Standardized milk.

For constitutionality see note under G. C., section 12717.

On the trial of an indictment for knowingly delivering skimmed milk with intent to defraud, evidence of similar deliveries about the same time is admissible to show guilty knowledge: *Bainbridge v. State*, 30 O. S. 264.

It is no offense to a prosecution for selling skimmed milk with intent to defraud, that the purchaser, and manufacturer of cheese had failed to post a copy of the statute in the receiving room of his factory, as required by law: *Bainbridge v. State*, 30 O. S. 264.

For questions relating to former jeopardy, see *Bainbridge v. State*, 30 O. S. 264.

A sale is not complete under the pure food laws until payment is made, and where a restaurant keeper refused payment from an inspector he could not be prosecuted for a sale: *Heider v. State*, 4 O. D. (N. P.) 227.

Under a former statute, R. S., section 7458-13, a complaint which charged a principal with an improper sale of milk was insufficient where the sale was made by an agent: *Heider v. State*, 4 O. D. (N. P.) 237.

Skimmed  
milk.

SECTION 12720. Whoever sells, exchanges, delivers or has in his custody or possession with intent to sell, exchange or deliver, milk from which the cream or part thereof has been removed, except standardized milk complying with the provisions of section 12719, unless in a conspicuous place above the center and upon the outside of each vessel, can or package, from which or in which such milk is sold, the words "skimmed milk" are distinctly marked in uncondensed Gothic letters not less than one inch in length, shall be fined not less than fifty dollars nor more than two hundred dollars. (109 v. 550.)

The act to prevent deception in the sale of dairy products to preserve the public health is constitutional: *Holtgreive v. Ohio*, 5 O. D. (N. P.) 166.

Under a prior statute punishing this same offense, R. S., section 4200-11, the word "dealer" was held to include one selling milk obtained from his own cows as well as one who bought and sold milk: *Guilder v. State*, 4 O. C. C. (N. S.) 73, 16 O. C. D. 221.

Price of  
milk.

SECTION 12720-1. The price paid to the producers of milk by the dealers or manufacturers shall be based upon milk containing 3.5 per cent butterfat; and a differential may be paid which should be greater for milk containing more than 3.5 butter fat. And whoever is guilty of a violation of this provision shall be fined not less than fifty dollars nor more than two hundred dollars. (109 v. 550.)

Subsequent  
offense.

SECTION 12721. For a second offense, a person violating the next preceding section shall be fined not less than one hundred dollars nor more than three hundred dollars or imprisoned in the jail or workhouse not less than thirty days nor more than sixty days, and, for a subsequent offense, shall be fined fifty dollars and so imprisoned not less than sixty days nor more than ninety days. (86 v. 229 sec. 3.)

The act to prevent deception in the sale of dairy products to preserve the public health is constitutional: *Holtgreive v. Ohio*, 5 O. D. (N. P.) 166.

Condensed  
milk.

SECTION 12725. Whoever manufactures, sells, exchanges, exposes or offers for sale or exchange, condensed milk unless it has been made from pure, clean, fresh, healthy, unadulterated and wholesome milk, from which the cream has not been removed and in which the proportion of milk solids shall be the equivalent of twelve per cent. of milk solids in crude milk, twenty-five per cent. of such solids being fat, and unless the package, can or vessel containing it is distinctly labeled, stamped or marked with its true name, brand, and by whom and under what name made, shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (83 v. 180 sec. 13, 15.)

General Code Ohio Section 12725 penalizing sale of condensed milk unless made from unadulterated full cream milk does not in case of wholesome compound of condensed skimmed milk and cocoanut oil contravene U. S. Constitutional Amendment 14, and the product is within the prohibition of section 12725 and its sale in Ohio is unlawful: *Hebe Co. v. Shaw*, 39 S. Ct. 125, 248 U. S. 297.

The police power of the state is properly exercised in the prevention of deception in the sale of dairy products, and in the protection of the health of the people, and it is within the scope of this power to regulate the manufacture and sale of articles of food, even though the right to manufacture and sell such articles is a natural right guaranteed by the constitution: *State v. Dairy Co.*, 62 O. S. 350 (affirmed by *Dairy Co. v. Ohio*, 183 U. S. 238, 14 O. F. D. 12).

SECTION 12726. Whoever, with intent to defraud, sells, delivers, or causes to be delivered, to a cheese or butter factory milk which is adulterated or diluted within the meaning of the law, or from which any cream has been taken, or from which the part known as "stripping" has been withheld, or keeps or renders a false account of the quantity or weight of milk furnished at or to a factory or sold to a manufacturer, shall be fined not less than fifty dollars nor more than two hundred dollars, and for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (83 v. 180 secs. 9, 15.)

Delivery of adulterated milk to cheese and butter factories.

A sale is not complete under the pure food laws until payment is made, and where a restaurant keeper refused payment from an inspector he could not be prosecuted for a sale: *Heider v. State*, 4 O. D. (N. P.) 227.

Where it is necessary to allege an intent to defraud G. C., section 13590, dispenses with the necessity of alleging an intent to defraud any particular person: *Bainbridge v. State*, 30 O. S. 264.

On the trial of an indictment for knowingly delivering skimmed milk with intent to defraud, evidence of similar deliveries about the same time is admissible to show guilty knowledge: *Bainbridge v. State*, 30 O. S. 264.

It is no defense to a prosecution for selling skimmed milk with intent to defraud, that the purchaser, and manufacturer of cheese had failed to post a copy of the statute in the receiving room of his factory as required by law: *Bainbridge v. State*, 30 O. S. 264. For questions relating to former jeopardy see *Bainbridge v. State*, 30 O. S. 264.

SECTION 12727. Whoever sells, exchanges, or offers for sale or exchange, unclean, impure, unhealthy or unwholesome milk shall be fined not less than fifty dollars nor more than two hundred dollars, and for each subsequent offense shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (83 v. 180 secs. 10, 15.)

Impure or unhealthy milk.

SECTION 12728. Whoever sells, exchanges, exposes, offers for sale or exchange, has in his possession or disposes of milk which is falsely branded, labeled, marked or represented as to grade, quantity or place where produced or procured, shall be fined not less than fifty dollars nor

Milk falsely branded or labeled.

more than two hundred dollars, and for each subsequent offense shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (83 v. 180 secs. 11, 15.)

Keeping unhealthy cow.

SECTION 12729. Whoever keeps a cow for the production of milk in a cramped or unhealthy condition, or feeds it on unhealthy food, or on food which produces impure, unhealthy or unwholesome milk, shall be fined not less than fifty dollars nor more than two hundred dollars, and for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (83 v. 180 secs. 12, 15.)

A threatened prosecution of milk dealers to whom distillery waste is sold will not be enjoined: Distilling Co. v. Brown, 8 O. N. P. (N. S.) 105, 19 O. D. (N. P.) 661.

### Milk Testing

Standard milk measure or pipette.

SECTION 12722. Whoever uses a standard measure of milk or cream other than that which is defined in this section, where milk or cream is purchased by or furnished to creameries or cheese factories and where the value of such milk and cream is determined by the per cent. of butter fat contained therein by the Babcock test, shall be fined not less than twenty-five dollars nor more than one hundred dollars. In the use of the Babcock test the standard milk measures or pipettes shall have a capacity of 17.6 cubic centimeters and the standard test tubes or bottles for milk shall have a capacity of two cubic centimeters for each ten per cent. marked on the necks thereof. The standard unit of cream for testing shall be eighteen grams. (97 v. 285, 286, sec. 1, 4.)

Selling or offering incorrectly marked measures.

SECTION 12723. Whoever offers for sale or sells a milk pipette or measure, test tube or bottle which is not correctly marked or graduated as provided in the next preceding section, shall be fined not less than twenty-five dollars nor more than one hundred dollars. (97 v. 286, secs. 2, 4.)

Manipulating the Babcock test.

SECTION 12724. Whoever, at a cheese factory, creamery, condensed milk factory or other place where milk is tested for quality or value, manipulates, underreads or overreads the Babcock test or any other contrivance used for determining the quality or value of milk or cream, or makes a false determination by the Babcock test or otherwise, shall be fined not less than twenty-five dollars nor more than one hundred dollars. (97 v. 286 secs. 3, 4.)

### Milk Bottles

Cleansing milk and cream bottle.

SECTION 12730. Whoever fills or refills with milk, cream or other milk product a glass jar or bottle, with intent to sell such milk, cream or other milk product, unless such

glass jar or bottle is first thoroughly cleansed or sterilized, shall be fined not more than one hundred dollars. (99 v. 454 sec. 2; 100 v. 17 sec. 3.)

### Bottles and Containers

SECTION 13169. Any person, firm or corporation engaged in the manufacturing, bottling, or selling of soda waters, mineral or aerated waters, ginger ale, porter, ale, beer, cider, small beer, milk, cream, lager beer, weiss beer, white beer, or other beverages or medicines, medicinal preparations, perfumery, oils, compounds, or mixtures, and using in the manufacture, sale and delivery of the same any bottles, siphons, siphon tops, tins, fountain tanks, kegs, bottle cases, or other containers, may mark and designate such bottles, siphon, siphon tops, tins, kegs, bottle cases, and other containers with his or its name or other mark or device branded, stamped, engraved, etched, blown or otherwise produced upon the same, and file in the office of the secretary of state and also in the office of the clerk of courts of the county in which his or its principal place of business is situated a description of such name, mark or device and cause such description to be printed once in each week for three weeks successively in a newspaper published in such county. Provided, that if the principal place of business of any such person, firm or corporation is in another state, the filing of such description shall be made in the office of the secretary of state and also in the office of the clerk of courts in any county of this state, and printed for three weeks successively in a newspaper published in such county. When any such person, firm or corporation shall have complied with the provisions of this section, he or it shall thereupon be deemed the proprietor of such name, mark or device and of every such bottle, siphon, siphon top, tin, fountain tank, keg, bottle case, or other container upon which may be branded, stamped, engraved, etched, blown or otherwise produced upon the same, such mark or device. Upon the filing with the secretary of state and county clerk, as herein above referred to, such name, mark or device there shall be paid to the secretary of state and the county clerk respectively one dollar for each such name, mark or device so filed. (105-106 v. 108.)

Registration of tins, tanks, bottles, kegs, or other containers with secretary of state; filing with county clerk.

Filing fee.

This section is valid and constitutional. It does not require that milk be sold only in glass jars or bottles having the name of the vendor blown therein: nor does it prohibit the use of such bottles other than for vending milk. The object of the legislature is to prevent the public from being misled as to the identity of the vendor: *State v. Doyle*, 17 O. C. C. (N. S.) 289.

This section relating to the filling and refilling of milk bottles and glass jars, is not repugnant to any constitutional provision and is a valid enactment:

SECTION 13169-1. When any person, firm or corporation, having complied with the provisions of section 13169 of this act, assigns by sale or otherwise his or its business including such name, mark or device to another person,

Assignment of name, mark or device to another; filing and publishing.

firm or corporation, the assignee shall have all the rights and immunities and obligations conferred by this act upon the original manufacturer, bottler or seller, relative to said bottles, siphons, siphon tops, tins, fountain tanks, kegs, bottle cases or other containers so assigned, provided such assignee shall, upon such assignment, file in the office of the secretary of state and also in the office of the clerk of courts of the county in which his or its principal place of business is situated a certificate of said assignment, and cause such certificate to be printed once in each week for three weeks successively in a newspaper published in such county. If the principal place of business of such assignee is in another state the filing of such certificate of assignment shall be made in the office of the secretary of state and also in the office of the clerk of courts in any county of this state, and printed once in each week for three weeks successively in a newspaper published in such county. (105-106 v. 109.)

Refilling  
registered  
container  
without con-  
sent of  
owner  
unlawful.

SECTION 13169-2. It is hereby declared unlawful for any person, firm or corporation to fill or refill, or cause to be filled or refilled, with soda water, mineral or aerated waters, ginger ale, porter, ale, beer, cider, small beer, milk, cream, lager beer, weiss beer, white beer, or other beverages, or with medicines, medical preparations, perfumery, oils, compounds, or mixtures any bottle, siphon, siphon top, tin, fountain tank, keg, or other container so marked or designated as aforesaid by any name, mark or device of which a description shall have been filed and published, as provided in section 13169 and 13169-1 of this act; or to fill with bottles with intent to sell their contents any bottle case so marked or designated; or to deface, erase, obliterate, cover up, or otherwise remove or conceal any such name, mark or device thereon, or to sell, buy, give, take or otherwise dispose or traffic in such bottles, siphon, siphon top, tin, fountain tank, keg, bottle case, or other container without the consent of, or unless the same shall have been purchased from the person, firm or corporation whose name, mark or device shall be in or upon the bottle, siphon, siphon tops, tin, fountain tank, keg, bottle case or other container so filled, refilled, trafficked in, used, or handled, as aforesaid. The provisions of this section shall not apply to any person, firm or corporation, as to filling or refilling with his or its product any bottle, siphon, tin, fountain tank, keg, bottle case, or other container, owned by and having the name, mark or designation of such person, firm or corporation pursuant to the provisions of this act, when such person, firm or corporation shall have complied with the rules and regulations of the dairy and food division of the agricultural commission of Ohio, relative to the cleansing of such bottles, siphons, siphon tops, tins, fountain tanks, kegs, bottle cases or other containers. (105-106 v. 109.)

To whom  
section  
does not  
apply.

Penalties  
for viola-  
tions.

SECTION 13169-3. Whoever violates any of the provisions of this act shall be punished for the first offense by a fine of not less than ten dollars nor more than fifty

dollars plus fifty cents for each and every such bottle, siphon, siphon top, tin, fountain tank, keg, bottle case or other container, by him so filled, refilled, sold, used, disposed of, bought, defaced, or trafficked in and for each subsequent offense by a fine of not less than twenty-five dollars, nor more than one hundred dollars plus five dollars for every such bottle, siphon, siphon top, tin, fountain tank, keg, bottle case or other container by him so filled, refilled, used, sold, disposed of, bought, defaced or trafficked in or by imprisonment not to exceed ninety days, or by both, such fine and imprisonment in the discretion of the magistrate or court before whom such offense shall be tried. (105-106 v. 110).

### **Oleomargarine**

SECTION 12731. Whoever sells, deals in, keeps for sale, exposes or offers for sale or exchange, a substance other than butter or cheese made wholly from pure milk or cream, salt and harmless coloring matter, which appears to be, resembles or is made in imitation of, or as a substitute for, butter or cheese, without keeping a card, not less than ten by fourteen inches in size in a conspicuous place where it may be easily seen and read in the store, room, stand, booth, wagon or place where such substance is, on which is printed upon a white ground in black Roman letters, not less in size than twelve line pica, the words, "oleomargarine sold here," or "imitation cheese sold here," and no other words, or sells oleomargarine, suine, imitation cheese or other dairy product at retail or in any quantity less than the original package, tub or firkin, unless he shall first inform the purchaser that the substance is not butter or cheese, but an imitation thereof, shall be fined not less than fifty dollars nor more than two hundred dollars, and for each subsequent offense shall be fined not less than one hundred dollars or more than five hundred dollars and imprisoned not less than ten days or more than ninety days. (83 v. 180 sec. 15; 85 v. 74 sec. 6.)

Placards to  
be displayed  
by dealers.

The pure food laws, of which this section is a part, are a reasonable exercise of the police power and constitutional: *State v. Capital City Dairy Co.*, 62 O. S. 350 (affirmed by *Dairy Co. v. Ohio*, 183 U. S. 238, 14 O. F. D. 12).

The fact that the article sold was manufactured under letters patent issued by the United States, constitutes no defense to an information or indictment for violating the provisions of a former statute similar to this section; the legislature has power to regulate, or forbid the sale of patented articles to the same extent as articles not patented, if no discrimination is made: *Palmer v. State*, 39 O. S. 236.

Where in violation of this section, oleomargarine is sold for butter, by a clerk in the store of the defendant in the ordinary course of business, it is no defense that he had instructed such clerk not to sell oleomargarine, except under its true name, marked and labeled as required: *Williams v. State*, 4 O. C. C. (N. S.) 193, 15 O. C. D. 673 (affirmed without report, 69 O. S. 570).

Where an affidavit charges the defendant with unlawfully selling oleomargarine and the evidence shows that the sale was made by a clerk authorized to sell, this is not a variance: *Williams v. State*, 4 O. C. C. (N. S.) 193, 15 O. C. D. 673 (affirmed without report, 69 O. S. 570).

Placards to be  
displayed by  
hotel prop-  
rietors, etc.

SECTION 12732. Whoever, being a proprietor, keeper, manager, or person in charge of a hotel, boarding house, restaurant, eating house, lunch counter, lunch room, boat, railroad car or other place, therein sells, uses, disposes of, furnishes, serves, or uses in cooking, a substance which appears to be, resembles, or is made in, or as an imitation of, or a substitute for butter or cheese which is not wholly made from pure milk or cream, salt and harmless coloring matter, without keeping a card in a conspicuous place therein, which shall be white and not less than ten by fourteen inches in size, upon which shall be printed in plain, black Roman letters, not less than twelve line pica, the words "oleomargarine sold and used here," or "imitation cheese sold and used here," and no other words, or sells, furnishes or disposes of such substance as and for butter or cheese made from pure milk or cream, salt and harmless coloring matter, when butter and cheese is asked for, shall be fined not less than fifty dollars nor more than two hundred dollars, and for each subsequent offense shall be fined not less than one hundred dollars nor more than five hundred dollars, and imprisoned not less than ten days nor more than ninety days. (83 v. 180 sec. 15; 85 v. 75 sec. 7.)

This section does not apply to violations committed on premises owned by the United States Government: U. S. Circuit Court, Edjt., 37 Bull. 294.

The governor of the Soldiers' Home at Dayton, Ohio, is not subject to the statute prescribing the manner in which oleomargarine shall be used in eating houses, since his act in this matter is the act of the United States government: In re Thomas, 82 Fed. 304, 10 O. F. D. 237.

In a prosecution under this section, it is not necessary to aver that the article was sold to be used as an article of food: Peters v. State, 11 O. D. (N. P.) 555.

Unhealthy  
dyes in oleo-  
margarine.

SECTION 12733. Whoever manufactures oleomargarine which contains methyl orange, butter-yellow, annatto, aniline dyes or other coloring matter, shall be fined not less than one hundred dollars nor more than five hundred dollars, and, for each subsequent offense, in addition to the above fine, may be imprisoned not more than ninety days. (91 v. 274, secs. 1, 5).  
CITED.

Williams v. State, 4 O. C. C. (N. S.) 193, 15 O. C. D. 673 (affirmed without report, 69 O. S. 570).

#### CONSTITUTIONALITY.

The pure food laws, of which this section is a part are a reasonable exercise of the police power and constitutional: State v. Dairy Co., 62 O. S. 350 (affirmed by Dairy Co. v. Ohio, 183 U. S. 238, 14 O. F. D. 12).

The pure food laws are valid in so far as they apply to sales made within the state of food products manufactured there; but they cannot be enforced in the regulation of interstate commerce, against the sale of oleomargarine colored to look like butter, in the original packages in which it was imported from other states: In re Worthen, 6 O. F. D. 683, 58 Fed. 467.

**WHO LIABLE. -**

A person who sells or delivers oleomargarine containing coloring matter to any person interested, or demanding the same for analysis, as required by G. C. section 5776, is liable, nevertheless, for prosecution under this section: *State v. Rippeth*, 71 O. S. 85.

An injunction will not lie at the suit of an inspector employed by the dairy and food commissioner, to compel a manufacturer and seller of oleomargarine to furnish samples for analysis. The remedy for refusal is by prosecution under this section: *State v. Dairy Co.*, 62 O. S. 123.

**PROSECUTION.**

The introduction of coloring matter into oleomargarine is the adulteration of an article of food punished by law, and a justice of the peace has jurisdiction of such an offense by G. C. Sec. 13423: *State v. Ruedy*, 57 O. S. 224.

An affidavit charging the accused with selling "oleomargarine which contained coloring matter, to-wit, butter yellow" sufficiently charges a violation of this section: *State v. Arata*, 69 O. S. 211.

In the trial of one charged with selling oleomargarine containing coloring matter, the testimony of a chemist experienced in the analysis of food products, that the article sold resembles, is a substitute for, or an imitation of butter, is admissible: *State v. Ehinger*, 67 O. S. 51.

**SECTION 12734.** Whoever, not being a manufacturer thereof, offers or exposes for sale, sells or delivers, or has in his possession with intent to sell or deliver oleomargarine which contains methyl-orange, butter-yellow, annatto, aniline dyes or other coloring matter, shall be fined not less than fifty dollars nor more than one hundred dollars. (91 v. 274, 275 secs. 1, 5.)

Selling oleomargarine containing same.

See note under G. C. Sec. 12733.

Cited: *State*, ex rel., v. *Atkins*, 18 O. C. C. 19, 9 O. C. D. 813; *State v. Groenland*, 1 O. S. U. 725.

In a prosecution under this section, it is not necessary to aver that the article was sold to be used as an article of food: *Peters v. State*, 11 O. D. (N. P.) 555 (affirmed 67 O. S. 494).

For form of an affidavit under this section, see *Peters v. State*, 11 O. D. (N. P.) 555 (affirmed 67 O. S. 494).

**SECTION 12735.** The word "oleomargarine" as used in the next two preceding sections means any substance, not pure butter of not less than eighty per cent. of butter fats, which is made as a substitute for, in imitation, or to be used as butter. (91 v. 275 sec. 4.)

Oleomargarine defined.

See also, note under G. C. Sec. 12733.

Cited: *State v. Groenland*, 1 O. S. U. 725.

"Oleomargarine" does not include butter made from pure milk or cream without any adulteration, though it is deficient in butter fats. The law does not purport to regulate the sale or grade of butter: *State v. Ransick*, 62 O. S. 283.

**Butter and Cheese**

**SECTION 12736.** Whoever furnishes, or causes to be furnished, in a hotel, restaurant or lunch-counter, "filled cheese," or "skimmed cheese," or a substance made in imitation or semblance of cheese, or as a substitute therefor, not made entirely from milk or cream, with salt, rennet and harmless coloring matter, to a guest or patron thereof,

Notice to guest or patron of hotel, etc.

instead of cheese, and fails to notify him that the substance so furnished is not cheese, shall be fined not less than ten dollars nor more than fifty dollars for each offense. (92 v. 53 sec. 7.)

Cited: State, ex rel., v. Atkins, 18 O. C. C. 19, 9 O. C. D. 813; State v. Groenland, 1 O. S. U. 725.

The governor of the Soldiers' Home at Dayton, Ohio, is not subject to the statute prescribing the manner in which oleomargarine shall be used in eating houses, since his act in this matter is the act of the United States government: In re Thomas, 82 Fed. 304, 10 O. F. D. 237 (affirmed 12 O. F. D. 82).

This section does not apply to violations committed on premises owned by the United States government: U. S. Circuit Court Edit., 37 Bull. 294.

In prosecutions under this section the jurisdiction of a mayor or police judge conferred by G. C. Sec. 13423, is limited to violations occurring within the limits of the city or village of such mayor or police judge: Peters v. State, 11 O. D. (N. P.) 535.

For form of an affidavit under this section, see Peters v. State, 11 O. D. (N. P.) 555 (affirmed 67 O. S. 494).

In a prosecution under this section it is not necessary to aver that the article was sold to be used as an article of food: Peters v. State, 11 O. D. (N. P.) 555 (affirmed 67 O. S. 494).

Selling or offering imitation or substitute when cheese called for.

SECTION 12737. Whoever sells or offers for sale, to a person asking, sending or inquiring for cheese, an article, substance or compound made in imitation or semblance of or as a substitute for cheese, not made entirely from milk or cream, with salt, rennet and harmless coloring matter, and containing not less than ten per cent. pure butter fats, shall be fined not less than fifty dollars nor more than one hundred dollars or imprisoned in the county jail not less than ten days nor more than thirty days, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than two hundred dollars or imprisoned in the county jail not less than twenty days nor more than sixty days or both. (97 v. 253 sec. 3.)

The pure food laws are valid in so far as they apply to sales made within the state of food products manufactured there; but they cannot be enforced in the regulation of interstate commerce, against the sale of oleomargarine colored to look like butter, in the original package in which it was imported from other states: In re Worthen, 6 O. F. D. 683, 58 Fed. 467.

Failure to placard sides of vehicle.

SECTION 12738. Whoever peddles, sells, solicits orders for the future delivery of or delivers from a cart, wagon, or other vehicle, upon the public streets or ways, "filled cheese," "skimmed cheese" or a substance made in imitation or semblance of cheese or as a substitute for cheese, not made entirely from milk or cream, with salt, rennet and harmless coloring matter, not having on both sides of such cart, wagon or other vehicle a placard in uncondensed gothic letters not less than three inches in length containing the words "filled cheese" or "skimmed cheese" and no other words, shall be fined not less than fifty dollars nor more than one hundred dollars or imprisoned in the county jail not less than ten days nor more than thirty days, and for each subsequent offense, shall be fined not less than one

hundred dollars nor more than two hundred dollars or imprisoned in the county jail not less than twenty days nor more than sixty days, or both. (92 v. 52 sec. 6.)

For similar cases see Sec. 12731.

SECTION 12739. Whoever sells "filled cheese," "skimmed cheese" or a substance made in imitation or semblance of cheese, or a substitute for cheese, not made entirely from milk or cream, with salt, rennet and harmless coloring matter, from a dwelling, store, office or public mart, without having conspicuously posted thereon a placard or sign in letters not less than four inches in length "filled cheese sold here" or "skimmed cheese sold here," and no other words, shall be fined one hundred dollars and one hundred dollars for each day's failure thereafter to conform to such provision of law. (92 v. 52 sec. 5.)

Posting of placard at place of business.

SECTION 12740. Whoever manufactures out of any oleaginous substance, or a compound thereof, other than that produced from unadulterated milk or cream, salt and harmless coloring matter, an article designed to be sold as butter or cheese made from pure milk or cream, salt or harmless coloring matter, shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. This section shall not prevent the use of pure skimmed milk in the manufacture of cheese. (83 v. 178, 180 secs. 2, 15.)

Restrictions on manufacture of artificial dairy products.

See notes under G. C. Sec. 12733.

SECTION 12741. Whoever sells, exposes or offers for sale or exchange, a substance purporting, appearing or represented to be butter or cheese, or having the semblance thereof, which is not made wholly from pure milk or cream salt and harmless coloring matter, unless it is done under its true name and each vessel, package, roll or parcel of such substance has distinctly and durably painted, stamped, stenciled or marked thereon its true name and the name of each article or ingredient used or entering (into) the composition thereof in ordinary bold faced letters, not less than five line pica in size, or sells or disposes of such substance without delivering with each amount sold or disposed of a label so marked, shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (84 v. 182 sec. 1; 83 v. 180 sec. 15.)

Restrictions on sale of artificial dairy products.

Cited: Williams v. State, 4 O. C. C. (N. S.) 193, 15 O. C. D. 673 (affirmed without report, 69 O. S. 570).

For constitutionality, see note under G. C. Sec. 12733. This section is constitutional: Holtgreive v. State, 7 O. N. P. 389.

An affidavit charging the defendant with keeping for sale an article made by compounding and adding with cream or butter,

animal fats, animal or vegetable oils is insufficient since it alleges distinct offenses: Ryan v. State, 5 O. C. C. 486, 3 O. C. D. 238.

The fact that the articles sold was manufactured under letters patent issued by the United States, constitutes no defense to an information or indictment for violating the provisions of a former statute similar to this section; the legislature has power to regulate or forbid the sale of patented articles to the same extent as articles not patented, if no discrimination is made: Palmer v. State, 39 O. S. 236.

Selling or offering imitation, or substitute without proper brands and placards.

SECTION 12742. Whoever sells or offers for sale, an article, substance or compound made in imitation or semblance of cheese, or as a substitute for cheese, not made entirely from milk or cream, with salt, rennet and harmless coloring matter, not marked and distinguished by all the marks, words and stamps required by law, and not having in addition thereto upon the exposed contents of every opened tub, box or parcel thereof, a conspicuous placard with the words, "filled cheese" or "skimmed cheese," as the case may be, printed thereon in plain, uncondensed letters not less than one inch long, shall be fined not less than fifty dollars nor more than one hundred dollars or imprisoned in the county jail not less than ten days nor more than thirty days, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than two hundred dollars or imprisoned in the county jail not less than twenty days nor more than sixty days, or both. (92 v. 52, sec. 4.)

Branding "full milk cheese" and "Ohio state full cream cheese"; penalty.

SECTION 12743. Whoever puts a brand indicating "full milk cheese" upon cheese made of milk from which any of the cream has been taken or uses such brand without having obtained from the secretary of agriculture in conformity to law, a stencil brand containing the words, "Ohio state full cream cheese," or uses such brand upon other than full cream cheese or a package containing such cheese, shall be fined not less than fifty dollars nor more than one hundred dollars or imprisoned in the county jail not less than ten days nor more than thirty days, and for each subsequent offense, shall be fined not less than one hundred dollars nor more than two hundred dollars or imprisoned in the county jail not less than twenty days nor more than sixty days or both. (107 v. 494).

Skimmed cheese.

SECTION 12744. The next preceding section shall not prohibit the manufacture and sale of full skimmed cheese from pure, wholesome and unadulterated milk that is skimmed. (92 v. 43 sec. 8.)

Sale of "filled cheese."

SECTION 12745. Whoever sells, exposes for sale or has in his possession with intent to sell, an article, substance or compound made in imitation or semblance of cheese, or as a substitute therefor, not made exclusively of milk or cream, with salt, rennet and harmless coloring matter, or containing fats, oils or grease not produced from milk or cream, without having the words "filled cheese" stamped, labeled or marked in printed letters of plain, uncondensed

gothic type, not less than one inch in length so that the words can not easily be defaced upon the side of each cheese, cheese-cloth or band around it, and upon the top and side of each tub, firkin, box or package containing it, shall be fined not less than fifty dollars nor more than one hundred dollars or imprisoned in the county jail not less than ten days or more than thirty days, and for each subsequent offense, shall be fined not less than one hundred dollars nor more than two hundred dollars or imprisoned in the county jail not less than twenty days nor more than sixty days, or both. (97 v. 253, sec. 1.)

SECTION 12746. Whoever sells, exposes for sale or has in his possession with intent to sell, cheese made exclusively of milk or cream with salt, rennet, and with or without harmless coloring matter and containing less than twenty-one per cent. of pure butter fat, without having the words "skimmed cheese" stamped, labeled or marked in printed letters of plain, uncondensed gothic type not less than one inch in length so that the words can not easily be defaced, upon the side of each cheese, cheese cloth or band around it, and upon the top and side of each tub, firkin, box or package containing it, shall be fined not less than fifty dollars nor more than one hundred dollars or imprisoned in the county jail not less than ten days nor more than thirty days, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than two hundred dollars or imprisoned in the county jail not less than twenty days nor more than sixty days, or both. (97 v. 253 sec. 1; 101 v. 110).

Label of  
"skimmed  
cheese."

SECTION 12746-1. Whoever sells, exposes for sale or has in his possession with intent to sell, cheese made exclusively of milk or cream with salt, rennet, and with or without harmless coloring matter, containing twenty-one per cent. or more and less than thirty per cent. of pure butter fat without having the words "Ohio Standard Cheese" stamped, labeled or marked in printed letters of plain uncondensed gothic type not less than one inch in length so that the words cannot easily be defaced, upon the side of each cheese, cheese cloth or band around it, and upon the top and side of each tub, firkin, box or package containing it, shall be fined not less than fifty dollars nor more than one hundred dollars. (101 v. 111.)

Label of  
"Ohio stand-  
ard cheese."

SECTION 12747. Whoever retails "filled cheese" or "skimmed cheese," as provided in the next two preceding sections, not in the original package, without attaching to each piece or package sold or delivered, a wrapper or label bearing in a conspicuous place on the outside of the package the words "filled cheese" or "skimmed cheese" in printed letters of plain, uncondensed gothic type not less than one inch in length, shall be fined not less than fifty dollars or more than one hundred dollars or imprisoned in the county jail not less than ten days nor more than

Sale of  
"skimmed  
cheese" not  
in original  
package.

thirty days, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than two hundred dollars or imprisoned in the county jail not less than twenty days nor more than sixty days, or both. (97 v. 253 sec. 1).

Erasing or canceling label on filled or skimmed cheese.

SECTION 12748. Whoever sells, exposes for sale or has in his possession with intent to sell, an article, substance or compound made in imitation or semblance of cheese, or as a substitute for cheese, except as provided in the next three preceding sections, or with intent to deceive, defaces, erases, cancels or removes a mark, stamp, brand, label or wrapper provided for in such sections, or falsely labels, stamps or marks, a tub, box, article or package so marked, stamped or labeled, shall be fined not less than fifty dollars nor more than one hundred dollars or imprisoned in the county jail not less than ten days nor more than thirty days, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than two hundred dollars, or imprisoned in the county jail not less than twenty days nor more than sixty days, or both. (92 v. 51 sec. 2).

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Fraudulent shipments of dairy products.

SECTION 12749. Whoever packs, boxes, encloses, ships or consigns a substance as butter or cheese made from pure milk or cream, salt and harmless coloring matter in such a manner as to conceal an inferior article by placing a finer grade of butter or cheese upon the surface of it, shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (83 v. 180 secs. 8, 15).

Falsely marked imitation dairy products.

SECTION 12750. Whoever sells, exchanges, exposes or offers for sale or exchange, disposes of or has in his possession a substance made in imitation or resemblance of, or as a substitute for a dairy product which is falsely branded, stenciled, labeled or marked as to the place where made, the name or cream value thereof, its composition or ingredients or in any other respect, shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (83 v. 179, 180 secs. 4, 15).

Selling falsely branded dairy products.

SECTION 12751. Whoever sells, exchanges, exposes or offers for sale or exchange, disposes of or has in his possession a dairy product which is falsely branded, stenciled, labeled or marked as to the place where made, date of manufacture, name or cream value thereof, composition, ingredients or in any other respect, or cheese wholly made from skimmed milk not having on the box or can containing it the words "made from skimmed milk," shall be fined not

less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (83 v. 179, 180 secs. 5, 15).

SECTION 12752. Whoever manufactures, mixes, compounds with or adds to pure milk, cream, butter or cheese, animal fat, animal, mineral or vegetable oils, acids or other deleterious ingredients, or manufactures any oleaginous or other substance not produced from pure milk or cream, salt and harmless coloring matter, or has in his possession or sells, offers or exposes it for sale or exchanges with intent to sell or dispose of it as and for butter or cheese made from unadulterated milk or cream, salt and harmless coloring matter, shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (83 v. 179, 180 secs. 3, 15).

Mixing improper articles with butter or cheese.

SECTION 12753. Whoever places on a package, roll, parcel or vessel containing an imitation dairy product not made wholly from pure milk or cream, salt and harmless coloring matter the words "butter," "creamery" or "dairy" or any word or combination of words embracing them, shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (83 v. 180 sec. 15; 84 v. 182 sec. 1).

Improper use of words "butter," "creamery," etc.

The statutes of Ohio regulating the manufacture and sale of oleomargarine, while valid as to sales made within the state of Ohio, manufacturers there cannot be enforced against the sale of oleomargarine colored to look like butter, in original packages in which it was imported from other states: In re Worthen, 58 Fed. 467, 6 O. F. D. 683.

An affidavit charging the defendant with keeping for sale an article made by compounding and adding with cream or butter, animal fats, animal or vegetable oils is insufficient since it alleges distinct offenses: Ryan v. State, 5 O. C. C. 486, 3 O. C. D. 238.

SECTION 12754. Whoever, in a charitable or penal institution of the state, having charge of the purchase of butter or cheese, knowingly purchases any butter or cheese which is not made wholly from pure milk or cream, salt and harmless coloring matter, and permits it to be used in such institution, shall be fined not less than fifty dollars nor more than two hundred dollars, and for each subsequent offense, shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days. (83 v. 180 secs. 14, 15).

Use of imitation butter or cheese at public institutions.

This section does not apply to violations committed on premises owned by the United States government: U. S. Circuit, Edit., 37 Bull. 294.

The governor of the Soldiers' Home at Dayton, Ohio, is not subject to the statute prescribing the manner in which oleomargarine shall be used in eating houses, since his act in this matter is the act of the United States government: *In re Thomas*, 82 Fed. 304, 10 O. F. D. 237 (affirmed, 12 O. F. D. 82).

Branding  
"full milk  
cheese."

SECTION 5781. A manufacturer of full milk cheese may put a brand upon each cheese manufactured by him indicating "full milk cheese," with the date and year when made, but a person shall not use such brand upon a cheese made from milk from which any of the cream has been taken. (92 v. 53 sec. 8).

Uniform  
stencil brand  
for cheese;  
registration;  
record fee.

SECTION 5782. The secretary of agriculture shall procure and issue to the cheese manufacturers of this state upon proper application made on or before the first day of April of each year and under such regulations as to the custody and use thereof as he may prescribe, a uniform stencil brand bearing a suitable device or motto, and the words "Ohio state full cream cheese". Such brand shall be used upon the outside of each cheese, cheese-cloth or band around it and upon the box or package containing it, and shall bear a separate number for each factory. Such brand shall not be used upon other than full cream cheese or packages containing it; provided, that no cheese shall be so branded unless it contains at least thirty per cent. of pure butter fat. The secretary shall keep a book in which shall be registered the name, location and number of each manufacturer using such brand, and the name or names of the person in each factory authorized to use it, and he shall receive one dollar for each registration according to the provision of this section, such fee to be paid by the person applying for such registration. (107 v. 491).

Skimmed  
cheese.

SECTION 5783. The next two preceding sections shall not prohibit the manufacture and sale of pure skimmed cheese made from milk that is clean, pure, wholesome, and unadulterated except by skimming. (92 v. 53 sec. 8.)

### Renovated or Process Butter

Manufactur-  
ing or selling  
"renovated  
butter" or  
"process  
butter."

SECTION 12755. Whoever manufactures for sale, offers or exposes for sale, sells, exchanges, delivers or has in his possession with intent to sell, exchange or deliver, butter that is produced by taking original packing stock butter or other butter, or both, melting such butter so that the butter fat can be drawn off or extracted, mixing such butter fat with milk, cream, skimmed milk or other milk product and reworking or rechurning such mixture, or manufactures for sale, offers or exposes for sale, sells, exchanges, delivers or has in his possession for any of such purposes butter which has been subjected to any process by which it is melted, clarified or refined, and made to resemble butter, and is commonly known as boiled, or cold extracted process or renovated butter, and which is hereby designated as "renovated butter" or "process butter," unless it is branded

or marked as provided in the next succeeding section, shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense shall be fined not less than one hundred dollars nor more than three hundred dollars or imprisoned in the county jail or workhouse not less than thirty days nor more than sixty days, or both. (99 v. 243, 244 secs. 1, 3.)

SECTION 12756. Whoever sells, exposes for sale or has in his custody or possession with intent to sell, "renovated butter" or "process butter," as defined in the next preceding section, unless the words "renovated butter" or "process butter" are conspicuously stamped, labeled or marked in one or two lines and in plain gothic letters, at least three-eighths of an inch square, so that such words cannot easily be defaced, upon two sides of each tub, firkin, box or package containing it or exposes such butter for sale uncovered or not in a case or package, unless a placard containing such words in the form above described, is attached to the mass in such manner as to be easily seen and read by the purchaser; or sells such butter from such package or otherwise at retail, in print, roll or other form, unless before delivering to the purchaser thereof it is contained in wrappers upon the outside of which is plainly printed or stamped the words "renovated butter" or "process butter" in one or two lines in plain gothic letters at least three-eighths of an inch square without other words or printing thereon and in plain view of said purchaser and not concealed, shall be fined not less than fifty dollars nor more than one hundred dollars, and for each subsequent offense, shall be fined not less than one hundred dollars nor more than three hundred dollars or imprisoned in the county jail or workhouse not less than thirty days nor more than sixty days, or both. (99 v. 244 secs. 2, 3).

Labeling and  
packing such  
butter.

## SANITARY INSPECTION

SECTION 12797. Whoever, being the proprietor, owner or manager of a bakery, confectionery, creamery, dairy, dairy barn, milk depot, laboratory, hotel, restaurant, eating house, packing house, slaughter house, ice cream factory, canning factory or place where a food product is manufactured, packed, stored, deposited, collected, prepared, produced or sold for any purpose, fails to place it in a clean and sanitary condition within ten days after being duly notified in writing or by posting the notice provided for in the next succeeding section, or fails to keep it in such condition thereafter, shall be fined not less than fifty dollars nor more than two hundred dollars, and, for each subsequent offense, shall be fined not less than one hundred dollars nor more than three hundred dollars or imprisoned in the county jail not less than thirty days nor more than one hundred days, or both. (107 v. 505).

Unsanitary  
bakery, cream-  
ery, dairy,  
packing  
house, etc.;  
penalty.

Posting  
notices by  
secretary of  
agriculture.

SECTION 12798. It shall be the duty of the inspectors of the secretary of agriculture of the state of Ohio to post in a conspicuous place in such of the places mentioned in the preceding section under their respective jurisdictions as directed by said secretary of agriculture a copy of the sanitary code adopted by it printed in plain, legible type at any time after the taking effect of this act. Upon said notice shall be stamped or written the date of such posting and such inspector shall make a record of such date in a book provided for that purpose. A certified copy of the record of such posting shall be received as prima facie evidence of such fact in the trial of any cause in any court of this state. (107 v. 505).

## ICE CREAM INSPECTION

SECTION 12730-1. For the purposes of this act the various forms of ice cream as a commercial product in this state are hereby defined as follows:

Ice cream  
standard.

(a) Ice cream is a frozen product made from pure, wholesome, sweet unneutralized cream and sugar with or without wholesome, harmless flavoring, and if desired the addition of pure wholesome milk solids and not to exceed one-half of one percent by weight of harmless thickener or stabilizer and containing not less than eight per cent by weight of milk fat. The acidity shall not exceed three-tenths of one per cent and it shall not weigh less than four and one-fourth pounds per gallon.

Same fruit  
ice cream.

(b) Fruit ice cream is a frozen product made from pure, wholesome, sweet cream and sugar and fruit mixture, and if desired the addition of pure wholesome milk solids and not to exceed one-half of one per cent, by weight, of harmless thickener or stabilizer and containing not less than eight per cent, by weight of milk fat.

Same nut  
ice cream.

(c) Nut ice cream is a frozen product made from pure, wholesome, sweet cream, sugar and sound, non-rancid nuts, and if desired the addition of pure wholesome solids and not to exceed one-half of one per cent, by weight, of harmless thickener or stabilizer and containing not less than eight per cent, by weight, of milk fat.

Same egg  
ice cream.

(d) Egg ice cream is a frozen product made from pure, wholesome, sweet cream, sugar and fresh, wholesome eggs, and if desired the addition of pure wholesome milk solids and not to exceed one-half of one per cent, by weight, of harmless thickener or stabilizer and containing not less than eight per cent, by weight, of milk fat. (109 v. 323.)

Name of  
frozen  
product.

SECTION 12730-2. The word ice cream, or a combination or association of the word ice cream, shall not be used as a name or a part of a name of any imitation or substitute for cream or milk or skim-milk mixture, of less than eight per cent of milk fats in ice cream, and eight per cent milk

fats in fruit, nut or egg ice cream, in any hotel, restaurant, or place where ice cream is sold, delivered or served. (109 v. 323.)

SECTION 12730-3. No person, firm or corporation shall be engaged in the business of operating a commercial ice cream plant without first obtaining a license for the operation of such a factory from the secretary of agriculture. Application for such license shall be made to the secretary of agriculture in such manner as he may prescribe and shall be accompanied by a fee of one dollar and fifty cents (\$1.50) for each gallon capacity of the freezer or freezers used. The secretary of agriculture shall thereupon cause an investigation to be made and if it be found that the applicant is supplied with the facilities necessary to operate a sanitary ice cream plant, and the plant is in a sanitary condition, the secretary of agriculture shall cause a license to be issued which shall be in effect for one year and may be renewed upon the same conditions and payment of the same fee, annually thereafter. (109 v. 323.)

License; fee;  
renewal.

SECTION 12730-4. The secretary of agriculture may suspend any such license temporarily for failure to comply with the provisions of this act, or any regulations or order made by him hereunder, and shall have the power finally to revoke the same for such cause. Before any such suspension or revocation of a license is made, the secretary of agriculture shall give written notice to the licensee that he contemplates the suspension or revocation of the same and giving his reasons therefor. Such notice shall appoint a time for hearing before said secretary of agriculture and may be sent by registered mail to the licensee. On the day of the hearing, the licensee may present such evidence as he desires, and after hearing the evidence, the secretary of agriculture shall decide the matter in such manner as to him appears just and right. (109 v. 323.)

Suspension  
and revoca-  
tion of  
license;  
hearing.

SECTION 12730-5. A licensee shall have the right to appeal to the board of agriculture from any such decision of the secretary of agriculture suspending or revoking his license, within three days from the time of receiving notification of such suspension or revocation, and such appeal shall stay the enforcement of such suspension or revocation until the decision of the board of agriculture. The board of agriculture shall fix a time for hearing such appeal and give such licensee opportunity to be heard and to produce evidence, and after hearing such evidence, the board of agriculture shall either affirm or disaffirm or modify such decision of the secretary of agriculture. (109 v. 323.)

Appeal to  
board of  
agriculture.

SECTION 12730-6. Whoever sells, exchanges, delivers, or has in his custody or possession with intent to sell, exchange or deliver, ice cream not made in accordance with the provision of section one of this act, or, whoever engages in the operation of a commercial ice cream plant without first obtaining a license from the secretary of agri-

Penalty for  
violation of  
act.

culture shall be fined not less than fifty dollars nor more than two hundred dollars, and for the second offense shall be fined not less than one hundred dollars nor more than five hundred dollars. (109 v. 323.)

Exempting  
social  
gathering.

SECTION 12730-7. For the purpose of this act, a commercial ice cream plant is hereby defined as a place or building in which ice cream is manufactured for the purpose of being placed on the open market for general consumption as human food, in hotels, restaurants, ice cream parlors, or amusement places, by wholesale and retail dealers, but does not include ice cream manufactured in private homes, clubs or any gathering of a co-operative, social nature. (109 v. 323.)

### COLD STORAGE INSPECTION

"Cold stor-  
age" defined.

SECTION 1155-1. The term "cold storage," as used in this act, shall mean the storage of food, at or below a temperature of forty degrees Fahrenheit, in a cold storage warehouse. (107 v. 594).

Cold Storage Law sections 1155-1 to 1155-19 constitutional. Leonard v. State, 101 O. S.

"Cold stor-  
age ware-  
house" de-  
fined.

SECTION 1155-2. The term "cold storage warehouse," as used in this act, shall mean a place artificially cooled by the employment of refrigerating machinery or ice or other means, in which articles of food are stored, for thirty days or more, at a temperature of forty degrees Fahrenheit, or lower. (107 v. 594).

"Food" de-  
fined.

SECTION 1155-3. The term "food" as used in this act, shall mean the fresh flesh of animals, and fresh products therefrom, the fresh flesh of fowls, fish, eggs and butter, which have been stored in a cold storage ware house. (107 v. 594).

"Container"  
defined.

SECTION 1155-4. The word "container" as used in this act, shall be taken to mean any bag, barrel, basket, bottle, box, caddy can, canister, carton, crate, firkin, hogshead, jar, jug, keg, stopper, vessel, wrapper, frozen bulk, or any similar or analogous utensil, receptacle, band or wrapper in which food may be kept, stored, sold, or offered for sale. (107 v. 594).

"Marked"  
defined.

SECTION 1155-5. The word "marked" as used in this act, shall be taken to mean written, printed, stamped or painted, or any other means whereby words or figures may be indicated in or on a container, or any cover attached thereto. (107 v. 595).

"Wholesome"  
defined.

SECTION 1155-6. The term "wholesome" as used in this act, shall mean fit for human food. (107 v. 595).

License to  
operate cold  
storage ware-  
house; ex-  
amination.

SECTION 1155-7. No person, firm, or corporation shall operate a cold storage warehouse without a license issued by the director of agriculture of Ohio. Such license shall be issued only on written application stating the location

of such warehouse. Upon receipt of the application the director of agriculture shall cause an examination to be made into the sanitary conditions of such warehouse. If it be found to be in a sanitary condition and properly equipped for the purpose of cold storage, the director of agriculture shall cause a license to be issued authorizing the applicant to operate a cold storage warehouse. No license shall be issued until the applicant therefor shall have paid to the director of agriculture the sum of fifty dollars. Such license shall be issued and shall run for one year, and shall be thereafter renewed annually upon the same conditions and payment. A license shall be required for each separate warehouse building within the state.

SECTION 1155-8. Whenever any warehouse licensed under the provisions of this act, or any portion of such warehouse, shall be deemed by the secretary of agriculture to be in an unsanitary condition, it shall be the duty of the secretary to cause such warehouse, or portion thereof, to be closed. (107 v. 595).

When warehouse shall be closed.

SECTION 1155-9. It shall be the duty of every person, firm, or corporation that shall be licensed to operate a cold storage warehouse to keep an accurate record of the receipts and withdrawals of food therefrom. The agents of the secretary of agriculture shall have free access to such records at all times. It shall be the duty of each person, firm or corporation licensed to operate a cold storage warehouse to file in the office of the secretary of agriculture on or before the sixth day of January, April, July and October, of each year, a report setting forth in itemized form the kind and quantities of food products held in cold storage in such warehouse. The report shall be made on printed forms prepared and supplied by the secretary of agriculture. The secretary of agriculture may cause such other reports to be filed and at such times as it may deem advisable. (107 v. 595).

Record of receipts and withdrawals of food required.

Quarterly statement of kind and quantity of food products held.

SECTION 1155-10. It shall be unlawful for any person, firm or corporation to place in any cold storage warehouse, to keep therein, or to sell, offer or expose for sale, any diseased, tainted, or otherwise unwholesome food, or to place in cold storage any slaughtered animals or parts thereof unless the entrails and other offensive parts have first been properly removed. (107 v. 595).

Unlawful to place unwholesome food in storage.

SECTION 1155-11. All food shall at the time it is deposited in any cold storage warehouse bear the date of such deposit plainly stamped thereon. Such food shall also bear a stamp indicating the date of removal. The marking of food as provided in this section shall be under such further regulations as may be prescribed by the secretary of agriculture. (107 v. 596).

Date of deposit stamped on food.

SECTION 1155-12. It shall be unlawful for any person, firm, or corporation, or any agent thereof to sell or offer or expose for sale, or have in possession with intent to sell at wholesale, any cold storage food, unless there shall be

Unlawful to sell without printed placard "wholesome cold storage food" attached.

placed on each container thereof, in a conspicuous place in full view of the purchaser, a placard with the word "wholesome cold storage food" printed thereon, in plain uncondensed gothic letters not less than one-half inch in length. In addition, all such food shall be marked with the date when it is withdrawn from such cold storage warehouse. There shall also be displayed upon every open container containing such food in the same manner, in a conspicuous position, in full view of the purchaser, a placard with the words "wholesome cold storage food" printed thereon in the same form as above described in this section, when such food is sold from such container or otherwise at retail. (107 v. 596).

Length of time certain foods may be kept in storage.

SECTION 1155-13. No person, firm or corporation shall sell, or offer, or expose for sale, any of the following foods which have been held for a longer period of time than herein specified in a cold storage warehouse: Whole carcasses of beef, or any parts thereof, twelve months; whole carcasses of pork, or any parts thereof, twelve months; whole carcasses of sheep, or any parts thereof, twelve months; whole carcasses of lamb, or any parts thereof, twelve months; whole carcasses of veal, or any parts thereof, twelve months; dressed fowl, twelve months; eggs, twelve months; butter, twelve months; and fresh fish, twelve months.

The court through a receiver may seize and sell meats stored beyond the statutory period even though some or all of the property has been sold, for both buyer and seller are subject to the provisions of the act: State v. Packing Co., 22 N. P. (N. S.) 108.

Food withdrawn may not be returned to storage.

SECTION 1155-14. After food has been withdrawn from any cold storage warehouse for the purpose of placing it on the market for sale, it shall be unlawful for any person, firm, or corporation to return such food, or any portion thereof, to such warehouse, or any other similar warehouse. Food may be transferred from one cold storage warehouse to another; provided, that the total length of time such food shall remain in cold storage, for the purpose of sale, shall not exceed the time specified in section thirteen of this act. (107 v. 596).

Sale of food kept in storage outside of state.

SECTION 1155-15. No food shall be sold, or offered or exposed for sale in this state, which shall have been placed or stored in any cold storage warehouse outside of this state, unless it first shall have been marked as provided for in section twelve of this act; provided, however, that no such food shall be sold, or offered or exposed for sale, in this state, if the total length of time that such food has remained in cold storage shall exceed the time specified in section thirteen of this act. (107 v. 596).

Transactions to which this act does not apply.

SECTION 1155-16. Nothing in this act shall be construed to prohibit the shipping, consigning or transporting of fresh food in properly refrigerated cars within this state to points of destination; nor to prohibit such food when received from being held in a cooling room for a period of

forty-eight hours; nor to prohibit the keeping of fresh food in ice boxes or refrigerators in retail stores while the same is offered or exposed for sale. (107 v. 596).

SECTION 1155-17. It shall be the duty of the secretary of agriculture to enforce all the provisions of this act and to make all rules and regulations, not otherwise herein provided, necessary for the enforcement of the same. (107 v. 597). Enforcement of act.

SECTION 1155-18. That all license, fees, fines and penalties imposed and recovered for the violation of any of the provisions of this act shall be paid into the state treasury to the credit of the general revenue fund. (107 v. 597). Application of fines and fees.

SECTION 1155-19. Whoever violates any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall for the first offense be fined not more than five hundred dollars, and for the second and each subsequent offense not more than one thousand dollars, and in addition thereto imprisoned in the jail of the proper county not less than thirty nor more than ninety days, or both. (107 v. 597). Penalty.

### SOFT DRINK INSPECTION

SECTION 1089-3. The term "soft drinks" as used in this act shall be held to mean and include any carbonated soda water, artificial or natural mineral water, and all other similar non-alcoholic carbonated or non-carbonated beverages. "Soft drink" defined.

No person, firm or corporation shall manufacture and bottle for sale within this state any such soft drink without a license issued by the secretary of agriculture of Ohio. License required.

Such license shall be issued only on written application stating the location at which such manufacture is to be conducted, and the applicant shall furnish the secretary of agriculture with a sample of each soft drink so proposed to be manufactured. Upon receipt of the application the secretary of agriculture shall cause an examination to be made into the sanitary conditions of such place of manufacture, and may also cause an analysis to be made of such samples, or any of them. If the buildings so to be used be found by the secretary of agriculture in a sanitary condition, and if the analysis of said samples show the same to be unadulterated and free from harmful drugs and other ingredients injurious to health, the secretary of agriculture, upon the payment of a license fee of fifty dollars (\$50.00), shall cause a license to be issued authorizing the applicant to manufacture any such soft drinks as hereinafter provided. Said license shall run one year unless sooner revoked as herein provided, and shall be renewed annually thereafter upon the payment of the same fee and compliance with same conditions. (108 v. 325.) Application; examination; fee; inspection.

All such soft drinks and places of manufacture of same shall be subject to inspection as hereinafter provided.

Soft drinks from outside state subject to inspection; registration; fee.

SECTION 1089-4. No such bottled soft drink that is manufactured out of the state of Ohio shall be sold or offered for sale within this state unless the same is first inspected and analyzed and approved as above by the secretary of agriculture, and registered by him, which shall be upon a like application as above provided, and a fee of fifty dollars (\$50.00) shall be paid therefor. Like samples for such inspection and analysis shall be furnished as above provided. Such registration shall be renewed annually upon the same terms and conditions and subsequent inspections and analysis may be made by the secretary of agriculture at any time in his discretion for the purpose of ascertaining whether or not the standard and quality of such soft drinks is being maintained. (108 v. 326.)

Retailers must register all soft drinks in possession.

SECTION 1089-5. No person, firm or corporation shall sell or offer for sale, or have in his possession with intent to sell, any soda water syrup or extract, or soft drink syrup, to be used in making, drawing or dispensing soda water or other soft drinks, without first registering his name and address and the name and address of the manufacturer thereof, and the number and variety of such syrups or extracts so intended to be sold, the trade name or brand thereof, if any be adopted, with the secretary of agriculture, together with such samples of the same as the secretary of agriculture may from time to time request for the purpose of analysis. He shall also pay into the state treasury at the time of making such registration a license fee of five dollars (\$5.00) and said license shall not be granted by the secretary of agriculture unless he determine that said syrup or extract is free from all harmful drugs and other ingredients injurious to health. Said registration shall be renewed annually upon like terms; provided that whenever any manufacturer, agent or seller shall have paid his fee, his agent or seller using the same shall not be required to do so.

License fee.

The provisions of this section shall not apply to local sellers of soft drinks as to such syrups and extracts made by themselves for their own use exclusively.

All moneys collected by the secretary of agriculture under the provisions of this act shall be paid into the state treasury. (108 v. 326.)

Appointment of inspector.

SECTION 1089-6. The secretary of agriculture is authorized to appoint an inspector, in addition to those already employed in his department, whose duty it shall be to represent and assist him in the enforcement of the provisions of this act.

Revocation of license.

The secretary of agriculture shall have power to revoke any license issued under the provisions of this act

whenever he shall determine that any provisions of this act have been violated. Any person, firm or corporation whose license has been so revoked shall discontinue the manufacture and sale of soft drinks, syrups and extracts, until the provisions of this act have been complied with and a new license issued.

The secretary of agriculture may revoke such license temporarily until there is a compliance with such conditions as he may prescribe, or permanently for the unexpired term of such license. (108 v. 327.)

SECTION 1089-7. Before revoking any license the secretary of agriculture shall give written notice to the licensee affected, stating that he contemplates the revocation of the same and giving his reasons therefor. Said notice shall appoint a time of hearing before said secretary and may be sent by registered mail to the licensee. On the day of hearing, the licensee may present such evidence to the secretary as he deems fit, and after hearing all the testimony, the secretary shall decide the question in such manner as to him appears just and right. (108 v. 327.)

Notice of  
revocation;  
hearing.

SECTION 1089-8. Any such person whose license has been revoked or registration cancelled, as above provided, who feels aggrieved at the decision of the secretary of agriculture, may appeal from said decision within ten days to the common pleas court of Franklin county, or of the county in which such manufactory or the principal place of business of such seller of syrups and extracts is located, and issue shall be made up in said court upon said appeal, and the same shall be tried and disposed of therein. (108 v. 327.)

Appeal to  
Common Pleas  
Court.

SECTION 1089-9. For the purpose of this act a bottled soft drink, except pure non-alcoholic fruit juices, shall consist of a beverage made from pure cane or beet sugar syrup containing pure flavoring materials with or without added fruit acid, with or without added color, and shall contain in the finished product not less than 7 per cent sugar, provided that nothing in this act shall prohibit the use of any other harmless ingredient in the manufacture of such soft drinks, but any substitute for sugar used in such manufacture shall be equal in sweetening power to 7 per cent cane or beet sugar, and the use of saccharin is prohibited. And provided further that, whenever artificial coal-tar colors are used, nothing but the certified colors as approved by the federal government are permissible. The provisions of this section shall not apply to retailers who do not bottle soft drinks, except as to saccharin; and all bottled soft drinks not in compliance with the standards established by this act shall be deemed to be adulterated. All adulterations of any of the drinks, extracts or other articles mentioned in this act shall be unlawful. (108 v. 327.)

Bottled soft  
drink de-  
fined.

Labeling of  
soft drinks.

SECTION 1089-10. Whenever artificial colors and artificial flavors are used in the manufacture of soft drinks to imitate a natural product, the bottle or other container shall be distinctly labeled "Artificially colored and Flavored" by a printed label upon the side thereof, or said words may be upon the metal crown or cap thereof. All other non-alcoholic ciders, fruitades, fruit juices, or other similar drinks that are made in imitation of the natural product shall be properly and distinctly labeled in the manner above provided with the word "Imitation" followed by the name of the beverage. If the drinks and beverages above mentioned and containing artificial coloring or artificial flavoring of any character are sold in bulk, label or sign containing the word "Artificially Colored, Artificially Flavored," or "Artificially Colored, Imitation Flavor," and printed or painted in letters not less than one inch long and of appropriate comparative width shall be displayed in a conspicuous place on the counters or shelves, or on all stands, booths or other places where such drinks or beverages are sold or dispensed. When such drinks or beverages contain artificial color and natural fruit flavor, it shall be sufficient to label the same "Artificially Colored." When they contain artificial flavors and no artificial color they may be labeled "Artificial Flavor" or "Imitation Flavor." (108 v. 328.)

Labeling of  
manufactured  
waters.

SECTION 1089-11. All manufactured waters, whether compounded and made in imitation of specified natural water or not, shall be labeled either as "Artificial" or "Imitation". The word "Artificial" or "Imitation" shall be placed at the top of the label, and shall be in letters of a size equal to or greater than any other wording on the label and equally as prominent, and the label shall have a uniform background.

All natural waters which have anything added to them or abstracted from them shall be labeled in the same manner with either of said words, and the manner in which the same has been so altered shall be clearly stated on the label.

Waters made in imitation of any natural spring water or mineral water, and bearing the name of such spring water or mineral water, as provided above, shall contain the same chemical ingredients and composition as the natural water after which they are so named.

All mineral waters whether of natural or artificial origin sold or offered for sale must be of good quality when judged by the results of the sanitary chemical analysis, special significance being attributed to the presence of nitrite, to free ammonia in excess of 0.05 miligram per liter, and to an undue amount of organic matter, if not so found, they shall be deemed to be adulterated. (108 v. 328.)

SECTION 1089-12. All bottles except siphons used in the manufacture of soft drinks, before being filled, shall be sterilized by soaking in a hot caustic solution of not less temperature than one hundred and twenty degrees Fahrenheit, that shall contain not less than three per cent, caustic or alkali expressed in terms of sodium hydrate for a period of not less than five minutes, then thoroughly rinsed in clean water until free from alkali or sodium hydrate. Each and every bottle so sterilized, when filled with a soft drink, must be distinctly labeled with the true name thereof in the manner above provided. (108 v. 329.)

Sterilizing  
containers and  
apparatus.

SECTION 1089-13. All buildings, stores, factories or other places where such soft drinks are manufactured or bottled shall be well lighted and ventilated and shall be kept at all times in a clean and sanitary condition. All machines, bottles, jars or other utensils used in the manufacture of soft drinks shall be kept at all times in a clean and sanitary place and in a sanitary condition. (108 v. 329.)

Ventilation  
of building.

SECTION 1089-14. No bottles shall be used in the manufacture of soft drinks in which the metal or rubber part of the stopper comes in contact with the beverage.

Provisions as  
to rubber  
stopper.

The provisions of this section shall not apply to carbonated water put up in "siphons." (108 v. 329.)

SECTION 1089-15. The secretary of agriculture shall enforce the provisions of this act and shall make suitable rules and regulations for carrying out its provisions. (108 v. 329.)

Enforcement.

SECTION 1089-16. Any person, firm or corporation who shall do any of the acts or things prohibited, or neglect or refuse to do any of the acts or things required by this act, or in any way violates any of its provisions, or who neglects or refuses to comply with any order of the secretary of agriculture, or in any manner obstructs or resists him in the performance of his duties, shall be deemed guilty of a misdemeanor and fined not more than one hundred dollars (\$100;) and for the second or subsequent offense may be fined a like sum or imprisoned in the county jail for a period of not more than ninety days, or both, at the discretion of the court. (108 v. 329.)

Penalties for  
violations.

## BREAD AND BAKERY INSPECTION

SECTION 1090-22. The word bakery is defined, for the purpose of this act, as a building or part of a building wherein is carried on the production, preparation, packing, storing, display or sale of bread, cakes, pies or other bakery products, including any separate room or rooms used for the convenience or accommodation of the workers; provided, that sections three, four, six, seven, eight and twenty shall not apply to retail stores where bakery products are sold but not produced. (109 v. 105.)

"Bakery"  
defined.

Standards  
adopted by  
secretary of  
agriculture.

SECTION 1090-23. The standards and requirements hereinafter prescribed shall conform to such rules as may be adopted by the secretary of agriculture. (109 v. 105.)

Drainage,  
light, ven-  
tilation, etc.

SECTION 1090-24. Every bakery shall be constructed, drained, lighted, ventilated and maintained in a clean and sanitary condition, and when and where necessary screened against flies, shall have plumbing and drainage facilities, together with suitable wash basins, wash sinks and toilets or water closets, which shall be kept in a clean and sanitary condition. The said toilets or water closets shall be in rooms having no direct connection with any room in which bakery products or ingredients are prepared, stored, handled or displayed. (109 v. 105.)

Dressing  
room.

SECTION 1090-25. In connection with every bakery a suitable room or rooms shall be provided for the changing and hanging of the wearing apparel of the workers or employes, which shall be separate and apart from the work, storage and sales rooms, and shall be kept in a clean and sanitary condition. (109 v. 105.)

Lounging  
in bakery.

SECTION 1090-26. No person shall sit, lie or lounge or be permitted to sit, lie or lounge upon any of the tables, shelves, boxes or other equipment or accessories used in connection with the production, preparation, packing, storing, display or sale of bakery products. No animals or fowls shall be kept in or permitted to enter any bakery. (109 v. 105.)

Personal  
cleanliness.

SECTION 1090-27. Before beginning work of preparing, mixing or handling any ingredients used in the production of bakery products, every person engaged in such work shall wash the hands and arms, and after using toilets or water closets, every person therein engaged shall wash the hands and arms thoroughly and then rinse in clean water; and for this purpose the owner or operator of the bakery shall provide sufficient facilities. (109 v. 105.)

Diseased  
employees.

SECTION 1090-28. No owner or operator of a bakery shall require or permit any person affected with any contagious, infectious or other disease or physical ailment which may render such employment detrimental to the public health, or any person who refuses to submit to the examination required in section eight, to work therein. (109 v. 105.)

Physical  
examination;

SECTION 1090-29. The state department of health or commissioner of health or the chief health officer in the several cities and towns, or the secretary of agriculture may require any person intending to work or working in a bakery to submit to a thorough examination for the purpose of ascertaining whether or not he is afflicted with any contagious, infectious or other disease or physical ailment. All such examinations shall be made by the district health commissioner. (109 v. 105.)

SECTION 1090-30. The floors, walls and ceilings of each bakery, the equipment used in the handling or preparation of bakery products of their ingredients, and the boxes, baskets and the interior of the vehicles and other receptacles in which bakery products are transported shall be kept by the owner or operator of the bakery or the carrier or distributor of said product in a clean and sanitary condition and at all times free from dirt, dust, flies, insects and other contaminating matter. Shipping baskets and other containers for transporting bakery products shall be kept clean and shall not be used for any other than bakery products by any person or concern. (109 v. 105.)

Sanitary  
condition of  
bakery.

SECTION 1090-31. All show cases, shelves and other places where unwrapped bakery products are sold or exposed for sale shall be kept by the dealer well covered, properly ventilated, adequately protected from dust, flies and other contaminating matter, and shall at all times be maintained in a sweet, clean and wholesome condition. (109 v. 105.)

Sanitary  
condition of  
bakery  
utensils.

SECTION 1090-32. Boxes or other permanent receptacles or containers for the storing, receiving or handling of bakery products shall be so placed and constructed as to be beyond the reach of contamination from streets, alleys and sidewalks, or from animals, and shall be kept by the dealer clean and sanitary. (109 v. 105.)

Same.

SECTION 1090-33. All bakery products and their ingredients shall be stored, handled, transported and kept in such manner as to protect them from spoilage, vermin, contamination, disease and unwholesomeness. No ingredient, or material, including water, shall be used therein which is spoiled or contaminated or which may render the product unwholesome, unfit for food, or injurious to health. (109 v. 105.)

Same.

SECTION 1090-34. No ingredient shall be used in any bakery product likely to deceive the consumer or which lessens its nutritive value without being plainly labeled, branded or tagged, or having a sign making plain to the purchaser or consumer the actual ingredients; provided, however, that in case of unwrapped bread to be sold by the loaf, such labeling, branding or tagging shall be placed upon the same label, as hereinafter provided, which shows the name of the manufacturer and the net weight of the loaf. Said ingredients and the sale or offering for sale of said products shall otherwise comply with the existing provisions of law regarding the sale of foods and not inconsistent herewith. (109 v. 105.)

Wholesome  
ingredients  
required.

SECTION 1090-35. No bakery products, except as hereinafter provided, shall be returned from any consumer or other purchaser to the dealer or baker, nor from any dealer to the baker, and no baker or dealer shall directly or indirectly accept any returns or make any exchange of bakery products from any dealer, restaurant or hotel-

Returns of  
unused goods.

keeper, consumer or other person. All such products shall be kept moving to the consumer without unreasonable delay and without any exchange, return or practice whatsoever which may disseminate contamination or disease or inflict fraud upon them, among consumers, or disseminate "rope", so-called, or other infection in bakeries, or which may cause waste in the food supply; provided, that this section shall not apply to crackers or other bakery products which are packed at the place of production in cartons, cans, boxes or similar permanent containers, and which are so packed and sealed at such place so as to fully insure their freshness and wholesomeness and protect them from contamination, adulteration and deterioration in the course of trade, and which remain in the original unbroken package as packed, except in so far as may be necessary to prevent waste in the food supply; and provided, further that "permanent containers" shall not be construed to include the paper or parchment wrappers used in wrapping loaves of bread. (109 v. 105.)

Rules of  
secretary of  
agriculture.

SECTION 1090-36. The secretary of agriculture may, by rule establish such exemptions as may be necessary to facilitate the sale of any accumulated or unsold stocks of wholesome bakery products, and in other cases not inconsistent with the purposes of this act. (109 v. 105.)

Weights of  
loaves of  
bread.

SECTION 1090-37. Bread shall not be sold or offered or exposed for sale otherwise than by weight and shall be manufactured for sale and sold only in units of sixteen or twenty-four ounces, or multiples of one pound. When multiple loaves are baked each unit of the loaf shall conform to the weight required by this section. The weights herein specified shall be construed to mean net weights twelve hours after baking and to be determined by the average weight of at least twenty-five loaves. Such unit weights shall not apply to rolls and such bread as shall be defined as fancy bread by the secretary of agriculture. Every loaf of bread manufactured for sale, sold, offered or exposed for sale shall have affixed thereon a plain statement in plain position of the weight of the loaf of bread, the business name of the maker, baker, or manufacturer. In the case of wrapped bread such information shall be stated on the wrapper of each loaf and in the case of unwrapped bread shall be stated by means of a pan impression or other mechanical means or shall be stated on a label using plain legible type. Such label affixed to an unwrapped loaf shall not be affixed in any manner or with any gums or pastes which are unsanitary and unwholesome, and there shall not be more than one label of a loaf or unit. (109 v. 105.)

Rules and  
regulations of  
secretary of  
agriculture.

SECTION 1090-38. The secretary of agriculture shall prescribe such rules and regulations as may be necessary to enforce the preceding section, including reasonable tolerances or variations within which all weights shall be kept, provided, however, that such tolerances or variations shall

not exceed one ounce per pound over or under the standard unit for single loaves, provided, however, that tolerance permitted in the weighing of twenty-five or more loaves shall not exceed one-half ounce per pound. The said secretary, and under his direction, the local sealers of weights and measures, shall cause the provisions of this section to be enforced. Before any prosecution is begun under this section the parties against whom the complaint is made shall be notified and be given an opportunity to be heard by said secretary. (109 v. 105.)

SECTION 1090-39. If, after inspection, it is found that a bakery is not constructed, maintained, operated, or the distribution of its products not conducted in accordance with this act, notice in writing shall be given to the owner or manager, stating the delinquency, and fixing a reasonable time within which the same shall be remedied and for a hearing to any party in interest. (109 v. 105.)

Inspection  
of bakery.

SECTION 1090-40. In case a bakery is unfit for the production and handling of food or dangerous to the health of its employes, the state or city department making the inspection may order the bakery or such part as may be found so unfit or so dangerous closed; provided, that any aggrieved person shall have the right to be heard before said department, or board, as the case may be, and shall also have a right of appeal, before or after the execution of such order, but within thirty days of its issuance, to the courts. (109 v. 105.)

Closing of  
unsanitary  
bakery.

SECTION 1090-41. Within sixty days after the taking effect of this act each bakery in the state of Ohio shall register with the secretary of agriculture. For such registration the owner or operator of each bakery shall pay an annual fee of \$2.00 for each oven operated in said bakery and said registration shall be renewed annually during the month of September. The registration of said bakery shall show its location, including street and number, name of ownership and name of manager. (109 v. 105.)

Registration  
fee.

SECTION 1090-42. No new bakery shall be established unless the building plans and equipment proposed to be used have been approved by the department of agriculture or by the board of health of the city or town. Said department or board shall refuse a permit to such bakery if the building and equipment do not comply with the provisions of this act and the rules and regulations made hereunder; provided, however, that any party in interest shall have the right of appeal to the department of agriculture or to the courts. Said department or court may affirm, reject or modify the findings of the board and the said board shall thereupon proceed in accordance with the order of the court or department. (109 v. 105.)

Approval of  
building plans  
of new  
bakery re-  
quired.

SECTION 1090-43. A violation of any provision of this act or any rule or regulation adopted herein, shall, for the

first offense, be fined not less than \$25.00 nor more than \$100.00, and for each subsequent offense not less than \$100.00 nor more than \$300.00. (109 v. 105.)

## CANNING FACTORY INSPECTION

Commercial canneries, under the supervision of state secretary; inspection.

SECTION 1090. All commercial vegetable and fruit canneries located within the state of Ohio shall be under the supervision and subject to the regulations of the secretary of agriculture. For the purpose of this act a commercial cannery is hereby defined to be a place or building where fruits or vegetables are packed in hermetically sealed containers and sterilized, and the products of which are placed on the market for general consumption as human food; but shall not be held to include private homes where farmers or others pack such fruits and vegetables for their own use and make occasional sales of a surplus thereof. At such times as the secretary of agriculture may deem proper he shall cause to be inspected all such canneries where fruits or vegetables are packed and preserved, and shall require the correction of all insanitary conditions, and may enter and search all places in or about the premises of any such cannery for the purposes of such inspection and investigation. (108 v. 330.)

Inspector of canneries; duties.

SECTION 1090-1. The secretary of agriculture shall appoint and assign, upon the passage of this act, an efficient and experienced inspector of canneries who has a thorough knowledge of the canning business, who shall have charge of such inspection, and whose duties it shall be to visit and inspect commercial fruit and vegetable canneries as often as may be required; see that such canneries and the operation thereof shall comply with the provisions of this act and with the regulations made by the secretary of agriculture hereunder; superintend the work of special inspectors stationed at canneries; and make reports thereof to the secretary of agriculture. (108 v. 330.)

Special inspector; duties.

SECTION 1090-2. The secretary of agriculture shall whenever he deems it necessary, furnish an efficient special inspector to be stationed at a commercial cannery or group of canneries while in operation, who shall see that such canneries and the operation thereof shall at all times comply with the provisions of this act and with such regulations made by the secretary of agriculture and that none but fit, wholesome and sound raw material is used in the preparation of such canned food products. (108 v. 330.)

When fruit shall be condemned.

SECTION 1090-3. Fruits or vegetables unfit for human food shall not be packed at any cannery, and shall be condemned as being unfit for such use by the inspector of canneries or by such special inspector. (108 v. 330.)

SECTION 1090-4. Any person, firm or corporation owning or operating such cannery where fruits or vegetables are packed, canned or preserved in hermetically sealed containers to be sold as food, may label and sell the same as having been packed in compliance with the laws of Ohio and the regulations of the secretary of agriculture, provided the person, firm or corporation packs, cans or preserves a product which is made from sound, fit and wholesome raw materials and which is absolutely free from chemical coloring matter and adulterants of any kind and whose canneries and cannery operations comply with the provisions of this act and the regulations of the secretary of agriculture. The secretary of agriculture shall furnish to each cannery that shall have fully complied with the provisions of this act and with such regulations, a certificate of inspection that such cannery has been inspected and has complied with all such laws and regulations. The secretary of agriculture may authorize the owner, owners or operators of such canneries to use a label or certificate on his products to read substantially as follows: "Packed and inspected in compliance with the laws of Ohio and regulations of the department of agriculture," or such other device or certificate with the words "Inspected and Approved" thereon, as the secretary of agriculture may from time to time designate by published regulations. (108 v. 330.)

When canned fruits, vegetables, etc., may be labeled and sold.

Certificate of inspection.

Certain label may be authorized.

SECTION 1090-5. No commercial cannery shall be located in an insanitary place or one which cannot be made sanitary or maintained in a sanitary condition, or where it is impossible to receive the raw material in a cleanly manner without danger of damage or contamination; or where sewage, garbage or other refuse can not be quickly and effectively removed. (108 v. 330.)

Location must be in sanitary place.

SECTION 1090-6. All garbage and waste material shall be removed daily to a distance of not less than one hundred feet from any building used in preparing or handling fruits and vegetables intended for canning, provided, however, that this section does not apply to the storage upon the premises of a cannery of by-products in silos or other structures or containers or in stacks, if such storage is made in an approved manner and is not a direct menace to proper sanitation. (108 v. 330.)

Removal of garbage and waste daily.

SECTION 1090-7. Horses, cattle or other live-stock shall not be kept or fed within seventy-five feet of any building, shed, room or place while used for the preparation of canned fruits or vegetables or for the storage of raw materials intended for canning. (108 v. 330.)

Keeping live stock near cannery.

SECTION 1090-8. Any building used in the preparation or handling of fruits or vegetables intended for canning shall be suitably ventilated and lighted either by artificial or natural means. All floors in such buildings shall be so constructed as to permit proper washing or cleaning, and

Ventilation and light; floor construction.

sufficient drains, gutters or sewers provided to insure the proper removal of water and liquid waste. First floors shall be waterproofed in such manner as will prevent the ground below from becoming wet, sloppy or insanitary. (108 v. 330.)

Provisions as  
to toilets.

SECTION 1090-9. Separate toilet rooms for each sex shall be provided upon the premises of all canneries, said toilets to be completely separated from work rooms by tight partitions and properly lighted and having an opening to the outside air. When out-door toilets without modern plumbing and sewerage systems are used, such toilets shall be located at least 75 feet from any building, room or place used in the preparation or canning of fruits and vegetables. All doors, windows and other openings in toilets, whether same be located within buildings or out of doors shall be screened against flies. (108 v. 330.)

Wash rooms,  
lavatories,  
etc.

SECTION 1090-10. Wash rooms, wash stations or lavatories for employes shall be provided in or adjacent to rooms or places used for the preparation or canning of fruits and vegetables, and such rooms or stations must be properly lighted and ventilated and provided with facilities necessary for keeping them in a sanitary condition. (108 v. 330.)

Smoking or  
spitting.

SECTION 1090-11. It shall be unlawful for any person to smoke or to spit on floors or walls in any room or building where fruit or vegetables intended for canning are being prepared or handled. (108 v. 330.)

Diseased  
employees.

SECTION 1090-12. Persons affected with tuberculosis or other communicable or infectious disease shall not be employed in or about any commercial cannery. (108 v. 330.)

Clean  
garments.

SECTION 1090-13. All employes who assist in preparing or handling fruit or vegetables intended for canning shall wear clean garments of washable fabrics and all female employes engaged in the same work shall wear clean washable caps covering the hair. (108 v. 330.)

Utensils and  
equipment.

SECTION 1090-14. All machinery, belts, chains, conveyors, utensils, and other equipment used in the preparation or handling of food or materials intended for food in commercial canneries shall be thoroughly cleaned daily and kept in a clean and sanitary condition. All cans and other containers intended for the hermetic sealing of such food products shall be washed, steamed, or sterilized before filling. (108 v. 330.)

Fruits, etc.,  
must be  
washed.

SECTION 1090-15. All fruits and vegetables in preparation for canning shall be thoroughly washed or cleaned before being scalded, blanched, cooked or filled into containers. (108 v. 330.)

Syrups, brine,  
etc.

SECTION 1090-16. Only potable water shall be used for making syrups or brine for canned fruits or vegetables or for washing equipment coming in contact with such material intended for canning. (108 v. 330.)

SECTION 1090-17. No person, firm or corporation shall engage in the business of operating a commercial cannery, without first obtaining a license for the operation of each such cannery from the secretary of agriculture.

License required.

In order to obtain such license an application shall be made, for which the secretary of agriculture may prescribe the form and which shall be accompanied by a fee of fifteen dollars. The secretary of agriculture shall thereupon cause an investigation to be made, and if it be found that the applicant is supplied with the facilities necessary for complying with this act, and that such commercial cannery is in sanitary condition, such license shall be issued and shall run for one year and shall be thereafter renewed upon the same conditions and payment.

Application; investigation fee.

The secretary of agriculture may suspend any such license temporarily for failure to comply with the provisions of this act or any regulation or order made by him hereunder, and shall have the power finally to revoke the same for such cause.

Suspension or revocation of license.

Before any such suspension or revocation of a license is made the secretary of agriculture shall give written notice to the licensee that he contemplates the suspension or revocation of the same and giving his reasons therefor. Such notice shall appoint a time for hearing before said secretary of agriculture and may be sent by registered mail to the licensee. On the day of the hearing the licensee may present such evidence as he desires and after hearing the evidence the secretary of agriculture shall decide the matter in such manner as to him appears just and right.

Notice; hearing; evidence.

A licensee shall have the right to appeal to the board of agriculture from any such decision of the secretary of agriculture suspending or revoking his license, within three days from the time of receiving notification of such suspension or revocation, and such appeal shall stay the enforcement of such suspension or revocation until the decision of the board of agriculture. The board of agriculture shall fix a time for hearing such appeal and give such licensee opportunity to be heard and to produce evidence, and after hearing such evidence the board of agriculture shall either affirm or disaffirm or modify said decision of the secretary of agriculture. (108 v. 330.)

Appeal to. board of agriculture; hearing.

SECTION 1090-18. At such times as the secretary of agriculture may deem proper he shall issue public bulletins of information, report and publish the conditions found in canneries, furnish and disseminate information regarding the canning industry and for that purpose may arrange for educational exhibits, demonstrations, public meeting, and give instructions to processors, superintendents, and managers of canneries as to the meaning and interpretation of this act and the regulations made by him hereunder. Such information shall be available to any person who is a resident of this state, and those now engaged in the business

Publication of bulletins.

of canning, and to those who may hereafter engage therein, who may properly apply therefor. (108 v. 330.)

Funds  
authorized.

SECTION 1090-19. The secretary of agriculture is hereby authorized to use funds available from the appropriations made for the general use of his department to enable him to carry this act into effect. (108 v. 330.)

Enforcement  
of laws.

SECTION 1090-20. The secretary of agriculture shall enforce the provisions of this act and shall make suitable rules and regulations for carrying out its provisions. (108 v. 330.)

Penalty.

SECTION 1090-21. Whoever shall, without authorization by the secretary of agriculture, and without inspection by the inspector of canneries or special inspectors appointed by the secretary of agriculture, use the certificate or label as provided for in section 4 of this act, or any other device authorized by the secretary of agriculture, or who shall use any raw materials, articles, or substances forbidden to be used in canning, or who shall violate any of the provisions of this act shall be guilty of a misdemeanor and shall upon conviction for the first offense be fined not less than fifty dollars nor more than two hundred dollars, and for the second offense shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail for not less than ten days nor more than sixty days, or both. (108 v. 330.)

## CANNED PRODUCTS

Unlabeled  
canned fruits  
and vegetable  
tables.

SECTION 12775. Whoever, being a packer or dealer in preserved or canned fruits, vegetables or other articles of food, offers them for sale unless they bear a mark to indicate the grade or quality, and the name and address of the person, firm or corporation packing or dealing therein, except such as are brought from foreign countries, shall be fined not less than fifty dollars if a vender, nor more than one thousand dollars if a manufacturer or packer. (82 v. 163 secs. 1. 3).

Falsely stamp-  
ing fruit or  
vegetable  
packages.

SECTION 12776. Whoever falsely stamps or labels cans or jars containing preserved fruit, vegetables or other articles of food knowingly permits such false stamping or labeling, shall be fined not less than five hundred dollars nor more than one thousand dollars; and whoever sells or offers to sell such cans or jars shall be fined not less than fifty dollars. (82 v. 163 sec. 3).

Label of  
"soaked"  
goods.

SECTION 12777. Whoever manufactures, sells or offers to sell "soaked" goods or goods put up from products dried before canning, without plainly marking them with an adhesive label having on its face the words "soaked," in letters not less in size than two line pica of solid and legible type, shall be fined not less than fifty dollars, if a vender,

and not less than five hundred dollars nor more than one thousand dollars, if a manufacturer or packer. (83 v. 73 sec. 2; 82 v. 163 sec. 3).

See note under Sec. 12758 in chapter on adulterations.

## CANDY

SECTION 12762. Whoever manufactures for sale, sells or offers for sale, candy with an admixture of terra alba, barytes, talc or other mineral substance, or with poisonous colors or flavors or other ingredients deleterious or detrimental to health, or, being a manufacturer of or dealer in candy, refuses, upon demand and a tender of payment therefor, to furnish a sample thereof for analysis, shall be fined not less than twenty-five dollars nor more than one hundred dollars or imprisoned not less than thirty days nor more than one hundred days, or both; and shall pay all costs and expenses incurred in inspecting and analyzing such adulterated candy which shall be forfeited and destroyed under the direction of the court. (83 v. 119 secs. 1, 2, 3).

Manufacture and sale of adulterated candy; samples.

## MAPLE SUGAR AND SYRUP

SECTION 12763. Maple sugar or pure maple sugar and maple syrup or pure maple syrup are the unadulterated product (produced) by the evaporation of pure sap from the maple tree. The standard of weight of a gallon of maple syrup of two hundred and thirty-one cubic inches shall be eleven pounds. A substance purporting to be maple syrup or maple sugar not made in compliance with this section shall be an adulteration of maple syrup or maple sugar, and maple syrup of less weight than herein required shall be an adulteration of maple syrup. (97 v. 36 sec. 1; 98 v. 201 sec. 2).

Maple sugar and syrup defined.

SECTION 12764. Whoever manufactures for sale, offers for sale, has in his possession with intent to sell, or sells or delivers, as and for maple syrup or maple sugar, an adulteration thereof shall be fined not less than fifty dollars nor more than two hundred dollars. (97 v. 46, 47 secs. 3, 6).

Adulterated maple sugar or syrup.

SECTION 12765. Whoever offers for sale, has in his possession with intent to sell, sells or delivers an adulteration of maple syrup or maple sugar in a box, can, bottle or other package having the word "maple," or a compound thereof, as the name or part of the name of the contents thereof of a device or illustration suggestive of maple syrup or sugar or the manufacture thereof, shall be fined

Fraudulent use of word "maple."

not less than fifty dollars nor more than two hundred dollars. (97 v. 47 secs. 5, 6).

It is not necessary, in an affidavit charging the sale of adulterated maple syrup, to set out in full a copy of the label on the package, but it is sufficient to state that it had on it the word "maple": Scanlon v. State, 16 O. C. C. (N. S.) 115.

In a prosecution for selling adulterated maple syrup, a charge, that the accused sold a package containing "a half pint more or less," is sufficient as the offense consists in selling a package, whether great or small: Scanlon v. State, 16 O. C. C. (N. S.) 115.

The evidence is sufficient to warrant a conviction for selling adulterated maple syrup if it shows that the substance sold contained anything not produced by the evaporation of pure sap from the maple tree: Scanlon v. State, 16 O. C. C. (N. S.) 115.

Package must  
bear label of  
packer.

SECTION 12766. Whoever offers for sale, has in his possession with intent to sell, sells or delivers as and for maple syrup or maple sugar, an article which does not bear the name and address of the packer and also the state, territory or country in which it was produced, in plain legible type upon the label, shall be fined not less than fifty dollars, nor more than two hundred dollars. (97 v. 47 sec. 4).

## FEED TO ANIMALS

Feeding un-  
wholesome  
offal or flesh  
to swine, etc.

SECTION 12779. Whoever feeds to animals, used for human food, the flesh of an animal which has become old, decrepit, infirm or sick, or has died from such cause, or offal or flesh that is putrid or unwholesome, shall be fined not less than fifty dollars nor more than two hundred dollars or imprisoned not more than thirty days, or both, and, for each subsequent offense, shall be fined not less than fifty dollars nor more than two hundred dollars or imprisoned not more than six months, or both. (R. S. Sec. 6028-1).

### Calf Under Four Weeks Old

Selling meat  
of calf less  
than four  
weeks old.

SECTION 12761. Whoever, for the purpose of selling, kills a calf less than four weeks old, or knowingly sells its meat or has such meat in his possession with intent to sell, shall be fined not more than fifty dollars or imprisoned twenty days, or both. (R. S. Sec. 6929).

## LINSEED OIL

Manufacture  
and sale of  
raw flaxseed  
or linseed oil.

SECTION 12790. Whoever manufactures, offers or exposes for sale raw flaxseed or linseed oil unless it is wholly obtained from the seeds of the flax seed plant and fulfills all the requirements recognized by the eighth decennial revision of the United States pharmacopœia, shall be fined not less than fifty dollars nor more than five hundred dollars or imprisoned not less than thirty days nor more than ninety days, or both. (92 v. 418 sec. 3; 99 v. 64 sec. 1).

SECTION 12791. Whoever manufactures, offers or exposes for sale boiled linseed oil unless it has been prepared by heating pure raw linseed oil to a temperature of 225 degrees Fahrenheit and incorporating not to exceed four per cent by weight of drier, shall be fined not less than fifty dollars nor more than five hundred dollars or imprisoned, not less than thirty days nor more than ninety days, or both. Such boiled linseed oil must also conform to the following requirements: 1st. Its specific gravity at 60 degrees Fahrenheit must be not less than 0.935 and not greater than 0.945. 2d. Its saponification value (Koettstorfer figure) must not be less than 186. 3d. Its iodine number must not be less than 160. 4th. Its acid value must not exceed 10. 5th. The volatile matter expelled at 212 degrees Fahrenheit must not exceed one-half of one per cent. 6th. No mineral oil shall be present, and the amount of unsaponifiable matter as determined by standard methods shall not exceed 2.5 per cent. 7th. The film left after flowing the oil over glass and allowing it to drain in a vertical position must be free from tackiness in not to exceed twenty hours, at a temperature of about 70 degrees Fahrenheit. (92 v. 418 sec. 3; 99 v. 64 sec. 1).

Same as to  
boiled linseed  
oil.

SECTION 12792. Whoever sells, exposes or offers for sale, flaxseed or linseed oil unless it is done under its true name, and each tank car, tank, barrel, keg or other vessel containing such oil has distinctly and durably painted, stamped, stenciled or marked thereon in ordinary boldfaced capital letters not less than five lines pica in size, the words "pure linseed oil—raw" or "pure linseed oil—boiled" and the name and address of the manufacturer thereof, shall be fined not less than fifty dollars nor more than five hundred dollars or imprisoned not less than thirty days nor more than ninety days, or both. (92 v. 418 secs. 2, 3).

Selling same  
under false  
name or with-  
out proper  
branding.

SECTION 12793. Whoever falsely stamps or labels tank-cars, barrels, kegs, cans or other vessels containing flaxseed or linseed oil, or knowingly permits such stamping or labeling, shall be fined not less than fifty dollars nor more than five hundred dollars or imprisoned not less than thirty days nor more than ninety days, or both. (92 v. 418 sec. 3).

Falsely label-  
ing tank cars  
or vessels  
containing  
same.

SECTION 12794. The board of agriculture shall enforce the provisions of the next four preceding sections. (92 v. 418 sec. 4). (103 v. 330).

Duty of  
board of  
agriculture.

## PAINTS, WHITE LEAD AND TURPENTINE

SECTION 6331. No person, firm or corporation shall expose for sale, or sell within this state, paint, naval stores or linseed oil which is labeled or marked so as to tend to deceive the purchaser thereof as to its nature or composition, or which is not labeled as required by this chapter. (99 v. 118 sec. 1; amended April 1923.)

Label must  
not be de-  
ceptive.

## SECTION 6331-1. That when used in this chapter:—

- Naval stores. (a) "Naval stores" means spirits of turpentine and rosin.
- Spirits of turpentine. (b) "Spirits of turpentine" includes gum spirits of turpentine and wood turpentine.
- Gum spirits of turpentine. (c) "Gum spirits of turpentine" means spirits of turpentine made from gum (oleoresin) from a living tree.
- Wood turpentine. (d) "Wood turpentine" includes steam distilled wood turpentine and destructively distilled wood turpentine.
- Steam distilled wood turpentine. (e) "Steam distilled wood turpentine" means wood turpentine distilled with steam from the oleoresin within or extracted from the wood.
- Destructively distilled wood turpentine. (f) "Destructively distilled wood turpentine" means wood turpentine obtained in the destructive distillation of the wood.
- Rosin. (g) "Rosin" includes gum rosin and wood rosin.
- Gum rosin. (h) "Gum rosin" means rosin remaining after the distillation of gum spirits of turpentine.
- Wood rosin. (i) "Wood rosin" means rosin remaining after the distillation of steam distilled wood turpentine.

Standards of above.

SECTION 6331-2. That when used in this chapter, the standards of quality and purity of gum spirits of turpentine, steam distilled wood turpentine, destructively distilled wood turpentine, gum rosin and wood rosin shall be those of the official naval stores standards of the United States, as set forth in the federal naval stores act or amendments thereto.

Prohibited acts.

SECTION 6331-3. That the following acts are hereby prohibited and made unlawful:—

(a) The sale in this state, of any naval stores, or of anything offered for sale as such, except under or by reference to the official naval stores standards of the United States;

(b) The sale of any naval stores in this state under or by reference to the official naval stores standards of the United States, which is other than what it is represented to be;

(c) The use in this state of the word "turpentine" or the word "rosin", singly or with any other word or words or of any compound, derivative or imitation of words, letter or combination of letters, provided in the federal act to define the official naval stores standards of the United States, to be used or to designate naval stores of any kind or grade, in selling, offering for sale, advertising, or shipping, anything other than naval stores of the official naval stores standards of the United States;

(d) The use in this state of any false, misleading, or deceitful means or practice in the sale of naval stores, or of anything offered for sale as such.

SECTION 6332. The term "paint" as used in this chapter shall include oxide of zinc, red lead and white lead, dry or in any kind of oil, and a compound intended for like use, colors ground in oil, paste or semi-paste paint, and liquid or mixed paint ready for use. (99 v. 118 sec. 2);

Paint defined.

SECTION 6333. The label required by this chapter shall clearly and distinctly state the name and residence of the manufacturer of the paint, or of the distributor thereof or of the party for whom it is manufactured, and show the name or names of any substance or substances used in quantities sufficient to be dangerous or injurious to human life or health whether through absorption contact or inhalation. The label shall be printed in the English language in plain legible type, in continuous list, with no intervening matter of any kind. (100 v. 101 sec. 3).

Label, what to specify.

SECTION 6334. The label on paint sold by measure shall show the net measure of the contents of the container, and on paint sold by weight, the net weight of the contents of the package. (99 v. 118 sec. 4).

Measure or weight to be shown.

SECTION 6335. The possession of an article or substance improperly marked or inaccurately labeled, as provided in this chapter, by a person, firm or corporation dealing therein shall be prima facie evidence that it is so kept in violation of this chapter and the penal statutes relating thereto. (99 v. 119 sec. 6).

Possession.

SECTION 6336. The secretary of agriculture shall enforce the provisions of this chapter and the penal statutes relating thereto and the secretary, his assistants, experts, chemists and agents shall have access and ingress to the places of business, stores, buildings and yards used for the sale of paint, naval stores, or linseed oil, and may open any package, tank car, tank, drum, barrel, can, jar, tub, or other receptacle containing any article that may be sold, offered for sale, or exposed for sale in violation of such provision or statute. The inspectors, assistants, or chemists, appointed by the secretary shall perform like duties and have like authority under this chapter and the penal statutes relating thereto as is provided by law in other cases. (Amended April 1923.)

Who empowered to enforce penal statute.

SECTION 13168. Whoever violates any provisions of law relating to the labeling, marking, stenciling, selling, offering or exposing for sale, or advertising of paints, mixed paints and similar compounds, naval stores, linseed oil, or white lead by manufacturers or distributors thereof, shall be fined not more than fifty dollars (\$50.00), and for each subsequent offense shall be fined not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00), or imprisoned not less than thirty days nor more than one hundred days, or both. (99 v. 119 sec. 9; 102 v. 73.)

Violating law relating to paints.

## NARCOTIC LAWS

Illegal barter  
and sale of  
narcotics.

SECTION 12672. Whoever purchases, sells, barter, furnishes or gives away, directly or indirectly, or has in his possession, for the purpose of selling, bartering, furnishing or giving away, directly or indirectly, any quantity of cocaine, alpha or beta eucaine, alypin, morphine, heroin, opium, or any of their alkaloids, salts, derivatives or compounds, or any synthetic equivalent thereof either as to the physical properties or physiological action, or has in his possession, for the purpose of using to satisfy the craving for any of the above-named drugs or substances, except upon the original written prescription of a physician, dentist or veterinary surgeon duly licensed under the laws of the state, and having a federal permit to prescribe narcotic drugs when prescribing for their patients for actual and necessary purposes in the proper practice of their respective professions, which prescription shall contain the name and address of the patient, the date of issue, the written signature, the address and federal permit number of the physician, dentist, or veterinary surgeon issuing it, the specific directions for use as provided for under federal narcotic law and regulations, or fails to keep such prescription in a separate file for at least two years, in such manner that it is accessible at all reasonable times to the inspection of the proper officer or officers of the law, and to the state department of agriculture or anyone acting in its behalf, or fills said prescription more than once, shall be fined not less than fifty dollars, nor more than five hundred dollars shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned in the penitentiary not less than one year nor more than five years or both at the discretion of the court. If it be made to appear to the court that the person so convicted is addicted to the use of any of the above named drugs or substances, the court, with the consent of the convicted person, may commit such person to a hospital or other institution for the treatment of such person. Any person who is not a wholesale dealer in drugs or who is not a pharmacist, physician, dentist or veterinary surgeon who possesses any of the above named drugs or substances, when not permitted, or any person who is not a wholesale dealer in drugs, or a pharmacist, physician, dentist or veterinary surgeon who writes, changes or misrepresents a prescription or order form for narcotic drugs, or has in his possession or procures or attempts to procure any of the above named drugs or substances on a changed or misrepresented prescription or order form shall be fined not less than two hundred dollars nor more than five hundred dollars or imprisoned not less than one year nor more than five years in the penitentiary, or both, at the discretion of the court. This section does not extend to sales at wholesale of any quantity of the above named drugs or substances to duly registered phar-

Prescription  
file.

Penalty.

Commitment  
to hospital of  
addict.

macists, physicians, dentists or veterinary surgeons, unless such sales, possession or use thereof is for the purpose of satisfying the craving for such drugs or substances named. This section does not extend to preparations sold, or to the prescription of preparations sold, or the refilling thereof, when they do not contain more than two grains of opium, or not more than one-fourth grain of morphine, or not more than one-eighth grain of heroin, or not more than one-eighth grain of alpha or beta eucaine, or not more than one grain of codeine, in one fluid ounce, if a liquid, or, one avoirdupois ounce, if a solid. This section does not extend to the dispensing, administering or giving away of any of the above named drugs or substances by a licensed physician, dentist or veterinary surgeon to a bona fide patient under the personal attendance of such physician, dentist or veterinary surgeon, occurring in the regular practice of their respective professions; provided, however, that such dispensing, administering or giving away is not for the purpose of evading the provisions of this act.

Exemption.

See opinions of Attorney General (1913), Vol. I, p. 911; (1913), Vol. I, p. 912; (1914), Vol. II, p. 1218.

The provision of this section, as amended in 101 v. 132, that where a person has been convicted of a second offense he shall be imprisoned in the penitentiary is not *ex post facto* or retroactive when applied to the case where the second offense was committed after the enactment of the provision for the punishment of the second offense although the first offense was committed prior to the enactment of such provision: *In re Allen*, 91 O. S. 315.

Where there is re-enacted in an amendatory act provisions of the original statute in the same or substantially the same language and the original statute is repealed in compliance with Section 16, Article II of the constitution, such provisions will not be considered as repealed and again re-enacted but will be regarded as having been continuous and undisturbed by the amendatory act: *In re Allen*, 91 O. S. 315.

This section, as amended 103 v. 505, which was passed by the general assembly April 17, 1913, and approved by the governor May 2, 1913, repealed this section as amended 103 v. 304 (340), which was passed April 15, 1913, and which was approved May 3, 1913, although by the provisions of Article II, section 16, of the constitution of Ohio, a bill which is passed by the general assembly and is approved by the governor becomes a law when he signs it. It is said that the governor will not be presumed to possess the power of repealing either bill by choosing which one he will sign first. Furthermore, neither of these bills was an emergency law, nor does it provide for a tax levy or an appropriation within the terms of Article II, section 1-d of the constitution of Ohio, as adopted September 3, 1912, and accordingly by the provision of Article II, section 1-c, of the constitution of Ohio, as adopted September 3, 1912, such law goes into effect ninety days after it is filed by the governor in the office of secretary of state, without regard to the time at which the governor signed such statute: *State v. Lathrop*, 93 O. S. 79.

SECTION 12672-1. For the purpose of the enforcement of the next preceding section, anyone, so empowered to enforce as provided for in the following section, may enter and search any room, rooms or other place wherein the provisions of the next preceding section are believed to be violated. Anyone who hinders, obstructs or interferes

Illegal possession, prima facie evidence of violation.

with the enforcement of the next preceding section shall be guilty of a misdemeanor and, on conviction, shall be fined not less than fifty dollars, nor more than two hundred dollars, together with the costs of prosecution. Anyone empowered to enforce the provisions of sections 12672, 12672-1 and 12679 of the General Code may arrest, without warrant, any person found to be violating said laws relating to the traffic in narcotics, and take such person before any justice of the peace or other officer having jurisdiction in such proceeding, and take such other action as the law provides. Anyone authorized to enforce the provisions of sections 12672, 12672-1 and 12679 of the General Code shall give suitable bond for the faithful performance of their duties.

See opinions of Attorney General (1914), Vol. II, p. 1218.

Enforcement.

SECTION 12673. It shall be the duty of the state department of agriculture or anyone acting in its behalf to enforce or cause to be enforced the provisions of sections 12672, 12672-1 and 12679 of the General Code and all fines or forfeited bonds, assessed and collected under prosecutions or prosecutions commenced, shall, within thirty days, be paid one-half to the secretary of the state department of agriculture and by him paid into the state treasury, and one-half to the treasury of the township or municipality in which the prosecution is held.

See opinions of Attorney General (1913), Vol. I, p. 912; (1914), Vol. II, p. 1218.

# WEIGHTS AND MEASURES

## STATE SEALER

SECTION 7965. The secretary of agriculture shall be state sealer, and shall make, promulgate and enforce such rules and regulations as may be necessary to the prompt and effective enforcement of the weights and measures laws of this state. The standards of weights and measures adopted by the state shall be deposited in a suitable room at Columbus, and be kept in suitable cases, to be opened only for the purpose of comparing them with such standards and copies which by law are furnished for the use of the several counties or villages unless by joint resolution of the general assembly, or upon a call of either house for information, or by order of the governor for scientific purposes. The secretary of agriculture shall, upon the passage of this act, and once every three years thereafter, require each county auditor and city or village sealer, in this state, to present all standards of weights and measures in their possession to him for comparison with the standards adopted by the state, and he shall condemn and destroy all of such standards as do not conform with the standards adopted by the state. Each county auditor and each city and village sealer shall be required to procure copies of all the original standards adopted by the state named in section 7966 of the General Code, except such standards now in their possession as the secretary of agriculture shall find to conform with the standards adopted by the state. It shall be the duty of the secretary of agriculture to advise and assist all county, city and village sealers, and generally be charged with the enforcement of all laws relating to weights and measures, and in the performance of such duties it may use the service of any person employed in his department. The secretary of agriculture or any person employed by him for that purpose may try and prove any weights, measures, balance and any other weighing or measuring device, on request from any person, and when the same are found or made to conform to the state standards shall cause the same to be sealed and marked as provided in section 2616 of the General Code. (107 v. 491).

State sealer.

Standards shall be kept at Columbus and comparisons made every three years.

Copies of standards shall be procured by county and municipal officials.

Proving and sealing weights and measures.

SECTION 7965-1. The secretary of agriculture or his deputy, or any other duly authorized sealer of weights and measures or his deputy, may inspect and test any weight, measure, balance or other weighing or measuring device, wherever the same is used or maintained for use, and if

When weight or measure condemned and confiscated.

such weight, measure, balance or other weighing or measuring device is found to be false or fraudulent, or cannot be made to conform to the legal standard, the same shall be condemned and confiscated by the said sealer or deputy sealer. (107 v. 492).

The provisions of this section, authorizing the condemnation and confiscation of false or fraudulent weighing or measuring devices, are within the police power of the state, and do not contravene either the state or federal constitution: *Williams v. Sandles*, 93 O. S. 92.

Approving or condemning weights or measures upon examination.

SECTION 7965-2. The secretary of agriculture or any duly authorized sealer of weights and measures or his deputy, shall inspect and test any weights and measures, balances and weighing or measuring devices having a device for indicating or registering the price as well as the weight or quantity of commodities both as to correctness of weight or quantity and value indicated by them, the secretary or any sealer of weights and measures or his deputy shall seal such weights and measures, or balances and weighing and measuring devices as shall be tested and found correct, and, after ten days' notice, in writing, to the owner shall condemn or seize such as are found to be incorrect, and shall seal such weights and measures, balances, weighing and measuring devices having a device for indicating or registering the price as well as the weight or quantity of commodities only when correct, both in indications of weight or quantity and value, and shall condemn or seize such in which the graduations or indications are found to be false or inaccurately placed, either as to weight or quantity or value. (107 v. 492).

Copies of standards for use of counties.

SECTION 7966. Copies of the original standards of the following materials, shall be procured by the state sealer for the use of each county in this state, not already furnished, in pursuance of law, and be delivered by him to the auditor thereof: One-half bushel measure, of one-eighth inch copper, with brass rim; one gallon measure, of one-sixteenth inch copper, with brass rim and handle; one-half gallon, one quart, one pint, and one-half pint measure, to be made in the same manner and of the same material; fifty, twenty-five, twenty, ten, five, four, three, two and one pound weights; avoirdupois, to be made of cast iron, turned, polished and trimmed; and one-half pound, one-quarter pound, two ounce, one ounce, half ounce, and quarter ounce weights, troy to be made of brass; one brass yard measure, graduated into feet, inches and tenths. (R. S. Sec. 143).

Device on county standards.

SECTION 7967. The state sealer shall cause to be impressed on each of the copies, so to be delivered to the counties, the letter "O," and such other device for each county, as he directs before its deposit in the county auditor's office. Such device shall be recorded in the state sealer's office, and a copy thereof furnished to the auditor of the proper county. (R. S. Sec. 141).

SECTION 7968. The state sealer shall furnish like copies of the original standards to the sealer of any city or village upon application therefor, and payment of the cost thereof, by such city or village. (R. S. Sec. 145).

Like copies to be furnished to cities and villages.

This general provision is said to authorize the proper authorities of incorporated cities and towns to appoint town sealers or inspectors of weights and measures; and as incident and necessary to such appointment to carry out the manifest object of this provision, which authorizes the creation of such municipal officer, the council may prescribe his duties: *Huddleson v. Ruffin*, 6 O. S. 604.

The sealer of a municipal corporation is not bound to seal or mark the weights and measures which are brought to him for that purpose, unless they conform exactly to the copies which the state sealer has furnished to him under this section: *Gates v. Cleveland*, 11 O. N. P. (N. S.) 545, 21 O. D. (N. P.) 141.

SECTION 7969. The state sealer shall render accounts to the auditor of state of all moneys by him paid or liabilities incurred in procuring and delivering copies of the standards to the counties; and the auditor shall audit such accounts and draw his warrants on the state treasurer for the amounts he finds due, which must be paid by the treasurer out of any moneys to the credit of the general revenue fund. (R. S. Sec. 146).

Expenses.

SECTION 7970. The state sealer of weights and measures shall have charge of all the apparatus and property, belonging to the state, intended for the inspection of illuminating gas and gas meters, and the testing of the registration of meter-provers; he shall test the registration of all meter-provers that may be presented to him for that purpose, and stamp and seal all such meter-provers, so tested, that are found correct. For testing the registration of gas meter provers, to be paid by the person requiring such service, he shall be allowed the sum of five dollars for each meter-prover tested. (R. S. Sec. 147.)

Inspection of gas and meters.

## COUNTY SEALER

SECTION 2615. By virtue of his office, the county auditor shall be county sealer of weights and measures and shall be responsible for the preservation of the copies of the original standards delivered to his office. It shall be the duty of the county auditor to see that all state laws relating to weights and measures be strictly enforced throughout his county and to assist generally in the prosecution of all violations of such laws. (R. S. Sec. 1054; amended May 10, 1910).

County sealer.

See opinions of Attorney General (1912), Vol. I, p. 482. (1912), Vol. II, p. 1162; (1913), Vol. I, p. 62; (1914), Vol. I, p. 911.

SECTION 2616. The county sealer shall compare all weights and measures, brought to him for that purpose, with the copies of standards in his possession. When they are made to conform to the legal standards, the officer comparing them shall seal and mark such weights and measures.

Comparison by county sealer; stamp.

No weight, measure, balance or other weighing or measuring device shall be used or maintained for weighing and measuring in this state unless such weight, measure, balance or other weighing or measuring device has been sealed or marked by the secretary of agriculture or any employe of the secretary detailed for that purpose, or by the county sealer of the city or village in which the same is used or maintained, and by stamping upon each the letter "O" and the last two figures of the year in which it has been compared with legal standards, adjusted and found or made to conform to said standards, with seals so provided by said secretary of agriculture, for that purpose. Whoever violates any of the provisions of this section shall be fined not less than fifty dollars nor more than one hundred dollars for the first offense and for each subsequent offense shall be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned for not more than ninety days, or both. A justice of the peace, police judge, or mayor shall have jurisdiction in such cases as in cases of violation of law relating to the adulteration of food and drink and dairy products. (107 v. 490).

Penalty, jurisdiction.

County sealer shall deliver copies to successor.

SECTION 2617. When a county sealer resigns, is removed from office, or removes from the county, he shall deliver to his successor in office the standards, beams, weights, and measures in his possession. In case of the death of a county sealer his representatives shall, in like manner, deliver to his successor in office such beams, weights and measures. (R. S. Sec. 1056).

Penalty for refusal.

SECTION 2618. In case of neglect or refusal to deliver such standards entire and complete, the successor in office may maintain a civil action against the person so refusing or neglecting, and recover double the value of such standards as have not been delivered, with costs of suit, which shall be by him appropriated to the purchase of such standards as are required in his office. (R. S. Sec. 1057).

Surveyors' chains and testimony.

SECTION 2619. No surveyor shall give evidence in a cause pending in any of the courts of this state, or before arbitrators, respecting the survey or admeasurement of any lands, unless such surveyor makes oath, if required, that the chain or measure used by him was conformable to the standards of the state. (R. S. Sec. 1058).

Penalty for using false weights and measures.

SECTION 2620. If any person hereafter uses any weights, measures, or beams, in weighing or measuring, which do not conform to the standards of the state, or any other measures established by law whereby a dealer in, purchaser, or seller of any commodity or article of traffic is injured or defrauded, such dealer, purchaser, or seller, may maintain a civil action against the offender, and if judgment is rendered him, he shall receive double damages and costs of suit. (R. S. Sec. 1059).

SECTION 2621. The provisions of the preceding two sections shall not be enforced in any county, unless it has been furnished with copies of the standards of this state, at least six months previous to such measuring or surveying. (R. S. Sec. 1660).

When not to be enforced.

SECTION 2622. Each county sealer of weights and measures shall appoint by writing under his hand and seal, a deputy who shall compare weights and measures wherever the same are used or maintained for use within his county, or which are brought to the office of the county sealer for that purpose, with the copies of the original standards in the possession of the county sealer, who shall receive a salary fixed by the county commissioners to be paid by the county which salary shall be instead of all fees or charges otherwise allowed by law. Such deputy shall also be employed by the county sealer to assist in the prosecution of all violations of laws relating to weights and measures. (R. S. Sec. 1061; amended May 31, 1911).

Deputy sealer of weights and measures.

See opinions of Attorney General (1912), Vol. I, p. 481; (1912); Vol. II, p. 1162; (1912), Vol. II, p. 1368; (1913), Vol. II, p. 1188; (1914), Vol. II, p. 911.

SECTION 2623. Each sealer may receive for his services the following fees: For sealing and marking every beam, ten cents; for sealing and marking measures of extension, at the rate of ten cents per yard, not exceeding twenty-five cents for any one measure; for sealing and marking each weight, five cents; for sealing and marking liquid dry measures, if of one gallon or more, ten cents, and if less than one gallon, five cents; and a reasonable compensation for marking such weights and measures, so as to conform to the standards. (R. S. Sec. 1062).

Fees.

## CITY SEALER

SECTION 4318. The mayor may appoint a sealer of weights and measures, who shall hold office co-extensive with the term of office of the mayor who made his appointment, and until his successor is appointed and qualified, unless otherwise removed from office. (R. S. Sec. 1783).

Sealer of weights and measures; appointment and term.

For the authority under former statutes of the council of the city of Cincinnati to appoint an inspector or sealer of weights and measures, to provide for enforcing the use of weights and measures sealed by such inspector, and for imposing a fine in case of the use of other weights and measures, see *Huddleson v. Ruffin*, 6 O. S. 604.

An ordinance which forbids the sale and delivery of hay within a municipal corporation, unless it is first weighed by the city weigher, does not apply to a sale which is made outside of the municipal corporation, although the hay is subsequently delivered within such municipal corporation: *Heminger v. Cleveland*, 2 Dec. Rep. 429, 3 W. L. M. 46.

A municipal corporation cannot forbid an individual from exercising the business of weigher: *Cincinnati v. Broadwell*, 3 Dec. Rep. 286.

An ordinance of the city of Cincinnati, passed in pursuance of the twelfth section of the act of March 5, 1860, "relating to cities of the first class," et. (2 S. & C. stat. 1559), providing for the appointment of an inspector and sealer of weights and measures by the city solicitor from among persons designated by the board of offices of the chamber of commerce, is a valid ordinance; and when such inspector and sealer is duly appointed in accordance with the provisions of such ordinance and thereupon tenders to the city council for their acceptance an official bond in all respects unobjectionable, the city council have no discretion left and must accept the bond: *State, ex rel., v. Cincinnati*, 11 O. S. 544.

See opinions of Attorney General (1914), Vol. I, p. 911.

Qualification  
and compen-  
sation.

SECTION 4319. The sealer of weights and measures shall be a competent person for the position, and shall receive a salary fixed by ordinance, to be paid by the corporation, which salary shall be instead of all fees or charges otherwise allowed by law or ordinance. (R. S. Sec. 1783).

Oath and  
bond.

SECTION 4320. Before entering upon his duties, the sealer of weights and measures shall take the oath of office required by law, and give bond to the corporation in such amount as is prescribed by ordinance, with security to the approval of the mayor, and conditioned for the faithful performance of his duties. (R. S. Sec. 1783).

Comparison  
with county  
standards.

SECTION 4321. At least once in three years, the sealer of weights and measures shall compare the copy of standards in his possession with those in the office of the county sealer. (R. S. Sec. 1783).

Authorizing  
the inspection  
of computing  
devices as  
well as  
weighing de-  
vices.

SECTION 4322. The sealer of weights and measures shall compare all weights and measures, balances, weighing and measuring devices used in the purchase and sale of commodities with the copies in his possession. Any weights and measures, balances and weighing and measuring devices having a device for indicating or registering the price as well as the weight or quantity of commodities shall be tested by him both as to correctness of weight or quantity and value indicated by them; such sealer shall seal such weights and measures, balances and weighing and measuring devices as shall be tested and found correct, and, after ten days' notice in writing to the owner, shall condemn or seize such as are found to be incorrect, and shall seal such weights and measures, balances, weighing and measuring devices having a device for indicating or registering the price as well as the weight or quantity of commodities only when correct both in indications of weight or quantity and value, and shall condemn or seize such in which the graduations or indications are found to be false or inaccurately placed either as to weight or quantity or value. (R. S. Sec. 1784; amended May 31, 1911).

Mandamus will lie upon the refusal of the city sealer to seal measures as required by this section to compel such officer to seal such measures when they accord with the proper standards: *Gates v. Cleveland*, 21 O. D. (N. P.) 141.

See opinions of Attorney General (1914), Vol. I, p. 911.

Municipal corporations are not vested with power to make it an offense "to expose for sale turnips in a receptacle not tested,

marked and sealed by the city sealer," and a conviction by a police court on such a charge will be set aside: *Gates v. Cleveland*, 18 O. C. C. (N. S.) 349.

The city sealer can not be required to seal rectangular wooden boxes having exactly twice the cubic contents of the standard half-bushel: *State, ex rel., v. Burns*, 18 O. C. C. (N. S.) 526.

## STANDARDS

SECTION 6403. The standard weights and measures furnished this state by the secretary of the treasury of the United States under a resolution of Congress, approved June 14, one thousand eight hundred and thirty-six, shall be the legal standard of weights and measures throughout the state. This chapter shall not prevent the use of the weights and measures of the metric system, authorized by congress of the United States, as it appears in the revised statutes of the United States. (R. S. Sec. 4428).

Standards, those furnished by United States government, metric system.

SECTION 6404. Contracts for work to be done, or for anything to be sold by weight or measure, shall be construed according to the standards hereby adopted as the standards of this state. (R. S. Sec. 4429.)

By what standard contracts construed.

SECTION 6405. The unit of standard measure of length and surface, from which all other measures of extension, whether lineal, superficial or solid, shall be derived and ascertained, is the standard yard, in possession of the secretary of state, and furnished by the government of the United States. The yard shall be divided into three equal parts, called feet, and each foot into twelve equal parts, called inches. For the measure of cloth and other commodities commonly sold by the yard, it may be divided into halves, quarters, eights and sixteenths. (R. S. Sec. 4430).

Yard, the standard measure of length and surface.

SECTION 6406. The rod pole or perch shall contain five and a half such yards, and the mile, one thousand seven hundred and sixty such yards. The chain for measuring land shall be twenty-two yards long, and divided into one hundred equal parts, called links. (R. S. Sec. 4431).

Contents of a rod, pole, perch, mile or chain.

SECTION 6407. The acre for land measure shall be measured horizontally, and contain ten square chains, and be equivalent in area to a rectangle sixteen rods in length and ten rods in breadth. Six hundred and forty acres shall be contained in a square mile. (R. S. Sec. 4432).

Contents of an acre.

SECTION 6408. The perch of mason work or stone shall consist of twenty-five cubic feet. (R. S. Sec. 4433.)

Contents of perch of mason work or stone.

SECTION 6409. The standard measure of a cord of fire-wood or tan-bark shall be one hundred and twenty-eight cubic feet, well stowed and packed. (R. S. Sec. 4434).

Contents of a cord of fire-wood or tan-bark.

Standard weights.

SECTION 6410. The units or standards of weight from which all other weights shall be derived and ascertained shall be the standard avoirdupois and troy weights furnished this state by the United States government. (R. S. Sec. 4435).

Definition of a pound and its subdivisions, ton.

SECTION 6411. The avoirdupois pound, which bears to the troy pound the ratio of seven thousand to five thousand seven hundred and sixty, shall be divided into sixteen equal parts called ounces. The hundredweight except of pig-iron and iron ore, shall consist of one hundred avoirdupois pounds, and twenty hundred weight shall constitute a ton. The troy ounce shall be equal to the twelfth part of a troy pound. (R. S. Sec. 4436).

Gallon the standard measure for liquids.

SECTION 6412. The unit or standard measure of capacity for liquids, from which all other measures of liquids shall be derived and ascertained, shall be the standard gallon, and its parts, furnished this state by the government of the United States. (R. S. Sec. 4437).

Contents of barrel and hogshead and branding thereof.

SECTION 6413. The barrel shall contain thirty-one and one-half gallons, and two barrels shall constitute a hogs-head. Barrels, for the purpose of containing apples, potatoes, onions or other fruit, produce or vegetables, shall be made of staves of seasoned timber, twenty-eight and one-half inches in length with cut heads of seventeen and one-eighths inches in diameter and shall measure at the bulge not less than sixty-six inches in circumference, outside measures. Such barrel shall be known as "the standard barrel," and on the outside of one or more of the staves thereof shall be stamped or branded the words "State of Ohio, standard," the name of the cooper or manufacturer thereof and the name of the city or town nearest to which the cooper shop or place of business of such manufacturer is located. (92 v. 406 sec. 2; R. S. Sec. 4438).

Half bushel the standard measure for substances other than liquids.

SECTION 6414. The unit or standard of measure of capacity for substances other than liquids, from which all other measures of such substances shall be derived and ascertained, shall be the standard half-bushel measure furnished this state by the government of the United States, the interior diameter of which is thirteen inches and thirty-nine-fortieths of an inch, and the depth is seven inches and one-twenty-fourth of an inch. (R. S. Sec. 4439).

The city sealer cannot be required to seal rectangular wooden boxes having exactly twice the cubic contents of the standard half-bushel: State, ex rel., v. Burns, 18 O. C. C. (N. S.) 526.

This section makes the half-bushel and not the bushel the standard of capacity for substances other than liquids: State, ex rel., v. Burns, 18 O. C. C. (N. S.) 526.

Dimensions and contents of measures for commodities other than liquid.

SECTION 6415. The peck, half-peck, quarter-peck, quart and pint measures for measuring commodities other than liquids shall be of the interior dimensions and capacities as follows, to-wit: the peck measure shall be eleven inches in interior diameter, five and five-eighths

inches in interior depth, and shall contain five hundred thirty-seven and six-tenths cubic inches; the half-peck measure shall be eight and one-half inches in interior diameter, four and three-quarter inches in interior depth, and shall contain two hundred sixty-eight and eight-tenths cubic inches; the quarter-peck measures shall be six and five-eighths inches in interior diameter, three and seven-eighths inches in interior depth, and shall contain one hundred thirty-four and four-tenths cubic inches; the quart measure shall be five and five-sixteenths inches in interior diameter, three inches in interior depth, and shall contain sixty-seven and two-tenths cubic inches; the pint measure shall be four and one-half inches in interior diameter, two and nine-twenty-fifths inches in interior depth, and shall contain thirty-three and six-tenths cubic inches. (103 v. 139). (R. S. Sec. 4440).

See opinions of Attorney General (1912), Vol. I, p. 482.

The authority to prescribe a standard of weights and measures not being vested by the constitution of the United States exclusively in congress, it is within the power of the legislatures of the several states, to enact laws fixing and regulating standards of weights and measures in all respects in which congress has not legislated upon the subject. G. C., section 6415 (103 O. L. 140), prescribing the dimensions of peck and lesser measures is, therefore, valid: *Williams v. Sandles*, 93 O. S. 92.

This section does not provide for any measure of capacity greater than the half-bushel: *State, ex rel., v. Burns*, 18 O. C. C. (N. S.) 526.

The power which is vested in congress by the federal constitution to regulate weights and measures does not extinguish the authority of the states over the same subject until congress sees fit to exercise the power so conferred. In the meantime each state is at liberty to establish its own standards and G. C. section 6415, as amended (103 v. 139), providing subdivisions of the half-bushel, is a valid enactment: *Eppinger v. Cincinnati*, 16 O. N. P. (N. S.) 257.

SECTION 6416. Articles usually sold by heaped measure shall be heaped in a conical form as high as such articles permit. (R. S. Sec. 4441).

Heaped measures.

A crate containing thirty cubic inches more than is required for a stroke measure bushel as defined by G. C. section 6417, is not a lawful measure for turnips which must be "heaped" as required in this section: *Gates v. Cleveland*, 21 O. D. (N. P.) 141, 56 Bull. 93.

See opinions of Attorney General (1912), Vol. I, p. 482.

The provision that articles shall be heaped "in a conical form" apparently excludes rectangular measures, and requires square measures: *State, ex rel., v. Burns*, 18 O. C. C. (N. S.) 526.

The city sealer cannot be required to seal rectangular wooden boxes having exactly twice the cubic contents of the standard half-bushel: *State, ex rel., v. Burns*, 18 O. C. C. (N. S.) 526.

Turnips are articles usually sold by heaped measures as defined by this section and a box or crate not containing when stroked a heaped bushel of turnips is not a lawful measure for turnips although it contains more cubic inches than is required for dry measure by G. C. section 6417: *Gates v. Cleveland*, 11 O. N. P. (N. S.) 545, 21 O. D. (N. P.) 141.

This section is of doubtful constitutionality: *Eppinger v. Cincinnati*, 16 O. N. P. (N. S.) 257.

SECTION 6417. Measures for measuring dry commodities not usually heaped shall be struck with a straight

How dry commodities measured.

stick, with the edges rounded. Commodities other than liquids, when sold by the gallon or less, shall be sold by the dry measure. (R. S. Sec. 4442.)

Turnips are articles usually sold by heaped measure as defined by G. C., section 6416, and a box or crate not containing when stroked a heaped bushel of turnips is not a lawful measure for turnips, although it contains more cubic inches than is required for dry measure by this section: *Gates v. Cleveland*, 11 O. N. P. (N. S.) 545, 21 O. D. (N. P.) 141.

Standard  
weight of  
bushel.

SECTION 6418. A bushel, in avoirdupois weight, of every article herein mentioned shall be, viz. of wheat, sixty pounds; of Indian corn in the ear, sixty-eight pounds; of Indian corn shelled, fifty-six pounds; of corn meal, forty-eight pounds; of popcorn in the ear, forty-two pounds; of sweet corn, shelled, forty-five pounds; of Kaffir corn, fifty-six pounds; of broom corn, forty-five pounds; of oats, thirty-two pounds; of rye, fifty-six pounds; of barley, forty-eight pounds; of buckwheat, fifty pounds; of Irish potatoes, sixty pounds; of sweet potatoes, fifty pounds; of beans, sixty pounds; of peas, sixty pounds; of onions, fifty-six pounds; of onion sets, twenty-eight pounds; of tomatoes, fifty-six pounds; of turnips, sixty pounds; of parsnips, fifty pounds; of beets, fifty-six pounds; of carrots, fifty pounds; of hominy, sixty pounds; of malt, thirty-four pounds; of apples, forty-eight pounds; of dried apples, twenty-four pounds; of peaches, forty-eight pounds; of dried peaches, thirty-three pounds; of grapes, forty-eight pounds; of plums, fifty pounds; of clover seed, sixty pounds; of timothy seed forty-five pounds; of millet seed, fifty pounds; of Hungarian grass seed, fifty pounds; of flaxseed, fifty-six pounds; of sorghum seed, fifty pounds; of hemp seed, forty-four pounds; of domestic walnuts, fifty pounds; of hickory nuts, fifty pounds; of lime, seventy pounds; of coke, forty pounds; of bituminous coal, eighty pounds; of cannel coal, seventy pounds. Unless otherwise agreed to, all of the above mentioned articles shall when dealt in by the bushel, be bought and sold upon such actual bulk weight, and no test for moisture shall be used to change the standards herein provided. The prosecuting attorney of each county shall enforce the provisions of the act. Any person, firm, company, corporation, agent or employe violating any of the provisions of this section shall be deemed guilty of misdemeanor, and upon conviction shall be fined not more than one hundred dollars, or imprisoned in the county jail (if a company or corporation its president) not more than six months, or both. (103 v. 559; R. S. Sec. 4443).

Penalty.

In a prosecution for offering commodities for sale in a measure which is not tested, marked and sealed by the city sealer of weights and measures, the accused cannot show how many pounds of potatoes the box would contain if the evidence shows that he offered turnips for sale therein. By the provisions of this section the weight of a bushel of turnips is sixty pounds, and the same weight is prescribed for a bushel of potatoes; but the court will take judicial notice that turnips are much larger than potatoes and that a box which would contain sixty pounds of potatoes will not

hold sixty pounds of turnips: *Gates v. Cleveland*, 11 O. N. P. (N. S.) 545, 21 O. D. (N. P.) 141.

SECTION 6419. The standard bushel of stone coal, coke and unslacked lime, shall contain twenty-six hundred and eighty-eight cubic inches; and the measure for measuring such articles shall contain two bushels, and be of the following interior dimensions: twenty-four inches diameter at the top, twenty inches at the bottom, and fourteen and one-tenth inches deep. (R. S. Sec. 4444).

Bushel for measuring lime, coke and stone coal.

SECTION 6420. Sales of coal shall be by weight; and two thousand pounds avoirdupois shall constitute a ton thereof; but where coal can not be weighed, it may be sold by measurement. (R. S. Sec. 4445).

When coal sold by weight; when by measurement.

SECTION 6421. Whoever sells stone coal in violation of this chapter shall be liable to the person to whom such coal is sold and delivered in treble damages. If the defendant in such action does not reside in the county where the mine is located, service may be had upon him by leaving a copy of the summons at his place of business. A judgment recovered in such action shall be a lien upon all property of such defendant in the county from the day of service. This section shall not apply to a person or corporation mining or selling less than fifteen thousand bushels of coal annually. (R. S. Sec. 4446).

Persons selling coal in violation of provisions.

SECTION 6422. The standard of measurement for a bushel of charcoal shall be twenty-seven hundred and forty-eight cubic inches. (R. S. Sec. 4444a).

Standard of measurement for bushel of charcoal.

SECTION 6422-1. That standards for Climax baskets for grapes and other fruits and vegetables shall be the two-quart basket, four-quart basket and twelve-quart basket respectively:

Standards for Climax Baskets for fruits and vegetables.

(a) The standard two-quart Climax basket shall be of the following dimensions: Length of bottom piece, nine and one-half inches; width of bottom piece, three and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, three and seven-eighths inches, outside measurement; top of basket, length eleven inches and width five inches outside measurement. Basket to have a cover of five by eleven inches, when a cover is used.

(b) The standard four-quart Climax basket shall be of the following dimensions: Length of bottom piece, twelve inches; width of bottom piece, four and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, four and eleven-sixteenths inches, outside measurement; top of basket, length fourteen inches, width six and one-fourth inches, outside measurement. Basket to have cover six and one-fourth inches by fourteen inches, when cover is used.

(c) The standard twelve-quart Climax basket shall be of the following dimensions: Length of bottom piece, sixteen inches; width of bottom piece, six and one-half inches; thickness of bottom piece, seven-sixteenths of an

inch; height of basket, seven and one-sixteenth inches, outside measurement; top of basket, length nineteen inches, width nine inches, outside measurement. Basket to have cover nine inches by nineteen inches, when cover is used. (108 v. 292.)



The standard Climax baskets for grapes and other fruits and vegetables are the two-quart basket, four-quart basket and twelve-quart basket.

Standards for  
small fruits  
and vege-  
tables.

SECTION 6422-2. That standard basket or other container for small fruits, berries and vegetables shall be of the following capacities: namely, dry one-half pint, dry pint, dry quart, or multiples of the dry quart.

(a) The dry half-pint shall contain sixteen and eighths cubic inches.

(b) The dry pint shall contain thirty-three and sixths cubic inches.

(c) The dry quart shall contain sixty-seven and two-tenths cubic inches.

The dimensions of the one-quart box used in the sale of berries or other fruits shall be as follows: Five and one-tenth inches square on top, four and three-tenths inches square on the bottom and three inches in depth.



The standard basket or other container for small fruits, berries and vegetables are the dry one-half pint, dry-pint or multiples of the dry quart.

Standard  
hampers  
for fruits  
and vege-  
tables.

SECTION 6422-3. That the standard hampers for fruits and vegetables shall be the one peck hamper, one-half bushel hamper, one bushel hamper and one and one-half bushel hamper respectively.

(a) The standard one peck hamper shall contain five hundred thirty-seven and six-tenths cubic inches, and conform to the following specifications: The inside diameter between staves at upper edge of the top inside hoop shall be ten and three-eighths inches; the inside diameter of the bottom shall be six and one-half inches; the inside length of the staves shall be nine and five-eighths inches; the inside top hoop shall be one-tenth inch thick and set with its upper edge even with the upper ends of the staves; there shall be ten staves, each not less than one-tenth inch thick and ten and one-eighth inches long; and the bottom piece shall be one-half inch thick.

(b) The standard one-half bushel hamper shall contain one thousand, seventy-five and twenty-one one-hundredths cubic inches, and conform to the following specifications. The inside diameter between staves at upper edge of the top inside hoop shall be thirteen inches; the inside diameter of the bottom shall be eight inches; the inside length of staves shall be twelve and one-half inches; the inside top hoop shall be one-ninth of an inch thick and set with its upper edge even with the upper ends of the staves; there shall be ten staves, each not less than one-tenth of an inch thick and thirteen and one-eighth inches long; and the bottom piece shall be five-eighths of an inch thick.

(c) The standard one bushel hamper shall contain two thousand, one hundred fifty and forty-two one hundredths cubic inches, and conform to the following specifications: The inside diameter between staves at upper edge of the top inside hoop shall be fifteen and one-eighth inches; the inside diameter of the bottom shall be nine inches; the inside length of the staves to the upper edge of the top inside hoop shall be nineteen inches; the inside top hoop shall be one-eighth of an inch thick and set with its upper edge three-eighths of an inch below the upper ends of the staves; there shall be either ten or twelve staves, each not less than one-eighth of an inch thick and twenty inches long; and the bottom piece shall be five-eighths of an inch thick.

(d) The standard one and one-half bushel hamper shall contain three thousand, two hundred twenty-five and sixty-three one hundredths cubic inches, and conform to either of the following specifications:

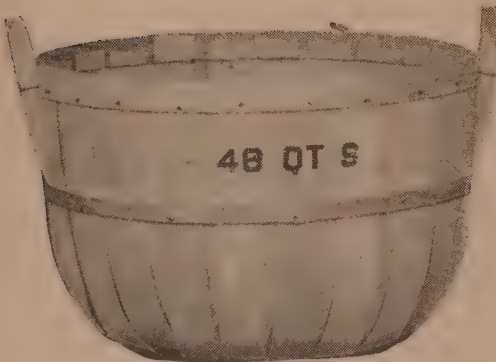
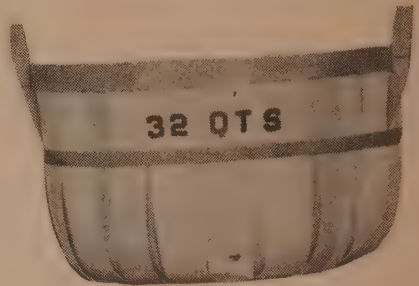
(1) The inside diameter between staves at upper edge of the top inside hoop shall be sixteen and one-fourth inches; the inside diameter of the bottom shall be nine inches; the inside length of the staves to the upper edge of the top inside hoop shall be twenty-five and thirteen-sixteenths inches; the inside top hoop shall be one-eighth of an inch thick and set with its upper edge three-eighths of an inch below the upper ends of the staves; there shall be ten staves, each not less than one-sixth of an inch thick and twenty-seven inches long; and the bottom piece shall be five-eighths of an inch thick.

(2) The inside diameter between staves at upper edge of the top inside hoop shall be sixteen and three-fourths inches; the inside diameter of the bottom shall be ten inches; the inside length of the staves to the upper edge of the top inside hoop shall be twenty-three inches; the inside top hoop shall be one-eighth of an inch thick and set with its upper edge three-eighths of an inch below the upper ends of the staves; there shall be ten staves, each not less than one-eighth of an inch thick and twenty-four inches long, and the bottom piece shall be five-eighths of an inch thick. (108 v. 292.)

Standard  
round stave  
baskets for  
fruits and  
vegetables.

SECTION 6422-4. That the standard round stave baskets for fruits and vegetables shall be one-half bushel basket, one bushel basket, one and one-half bushel basket and two bushel basket respectively.

(a) The one-half bushel round stave basket shall contain one thousand seventy-five and twenty one-hundredths cubic inches, and conform to the following specifications: The inside diameter at the upper inner edge of the top inside hoop shall be thirteen and one-half inches; the average inside depth shall be not less than eight and one-half inches; the web shall consist of twenty intersecting staves, each not less than one-eighteenth of an inch thick and of such length that they will form the sides and bottom of a basket which shall contain sixteen quarts standard dry measure.



The standard round stave baskets for fruits and vegetables shall be the one-half bushel basket, one bushel basket, one and one-half bushel basket, and the two bushel basket.

(b) The one bushel round stave basket shall contain two thousand, one-hundred fifty and forty-two one-hundredths cubic inches, and conform to the following specifications: The inside diameter at upper inner edge of the top inside hoop shall be seventeen inches; the average inside depth shall be not less than ten and three-fourths inches; the web shall consist of twenty intersecting staves,

each not less than one-eighteenth of an inch thick and of such length that they will form the sides and bottom of a basket which shall contain thirty-two quarts standard dry measure.

(c) The one and one-half bushel round stave basket shall contain three thousand, two hundred twenty-five and sixty-three one-hundredths cubic inches, and conform to the following specifications: The inside diameter at upper inner edge of the top inside hoop shall be nineteen inches; the average inside depth shall be not less than twelve and three-fourths inches; the web shall consist of twenty-four intersecting staves, each not less than one-sixteenth of an inch thick and of such length that they will form the sides and bottom of a basket which shall contain forty-eight quarts standard dry measure.

(d) The two bushel round stave basket shall contain four thousand, three hundred, and eighty-four one hundredths cubic inches, and conform to the following specifications: The inside diameter at upper inner edge of the top inside hoop shall be twenty and three-fourths inches; the average inside depth shall be not less than thirteen and three-fourths inches; the web shall consist of twenty-four intersecting staves, each not less than one-sixteenth of an inch thick and of such length that they will form the sides and bottom of a basket which shall contain sixty-four quarts, standard dry measure. (108 v. 292).

SECTION 6422-5. That it shall be unlawful to ship or deliver for shipment within the state of Ohio, Climax baskets, small fruit baskets, hampers, or round stave baskets, for fruits or vegetables, either filled or unfilled or parts of such Climax baskets, small fruit baskets, hampers or round stave baskets, that do not comply with this act; or fruits or vegetables in Climax baskets, small fruit baskets, hampers or round stave baskets, that at the time of such shipment, delivery for shipment, or offer for sale, are not filled to the full capacity thereof, stricken measure. Any individual, partnership, association or corporation, that willfully violates this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not exceeding \$100.00 or imprisonment not exceeding sixty days or both. (108 v. 292.) Penalties.

SECTION 6422-6. That the secretary of agriculture is authorized to prescribe such regulations as he may find necessary for carrying into effect the provisions of this act, and to cause such examinations and tests to be made as may be necessary in order to determine whether Climax baskets, small fruit baskets, hampers and round stave baskets or parts thereof subject to this act, meet its requirements. For said purpose the authorized officers and agents of the secretary of agriculture may visit factories, stock rooms, and other places of business where such hampers or baskets or parts thereof are manufactured or held for sale or shipment or offered for sale, may enter cars, vessels, Rules and regulations.

other vehicles and places under the control of carriers engaged in the transportation of such hampers or baskets or parts thereof, and may take samples of such hampers or baskets or parts, the cost of which samples, upon request, shall be paid to the person entitled thereto. (108 v. 292.)

Enforcement.

SECTION 6422-7. It shall be the duty of the secretary of agriculture to enforce all the provisions of this act, and to prescribe such rules and regulations not otherwise herein provided, as he may deem necessary, for the efficient execution of the provisions of the same, including the amount of tolerance necessary in the enforcement of this act, because of the impossibility of perfect scientific exactitude in the manufacture of such Climax baskets, small fruit baskets, hampers and round stave baskets; and which regulations and tolerances shall be in conformity with those from time to time promulgated by the United States department of agriculture. (108 v. 292.)

Different forms may be permitted.

SECTION 6422-8. The secretary of agriculture for good and sufficient reasons may permit the use of Climax baskets, small fruit baskets, hampers and round stave baskets of a different form from the baskets prescribed in this act but of the same capacity. (108 v. 292.)

When dealer shall not be prosecuted.

SECTION 6422-9. That no dealer shall be prosecuted under the provisions of this act when he can establish a guaranty signed by the manufacturer, wholesaler, jobber, or other party residing within the United States from whom such Climax basket, baskets, or other containers as defined in this act, were purchased, to the effect that said Climax basket, baskets or other containers are correct within the meaning of this act. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of Climax basket, baskets, or other containers, hampers or round stave baskets, to such dealer, and in such case said guarantor shall be amenable to the prosecutions, fines and other penalties which would attach in due course to the dealer under the provisions of this act. (108 v. 292.)

SECTION 6422-10. That this act shall be in force and effect from and after the first day of November, nineteen hundred and twenty. (108 v. 292.)

Selling by false weight.

SECTION 13106. Whoever, in buying or selling any property, or directing or permitting an employe so to do, makes or gives a false or short weight or measure; or whoever has charge of scales or steelyards fixed for the purpose of misweighing an article bought or sold, or, having scales or steelyards for the purpose of weighing property, reports a false or untrue weight; or whoever uses in the sale of a commodity a computing scale or device indicating the weight and price of such commodity upon which scale or device the graduations or indications are false, or inaccurately placed, either as to weight or price, shall be fined not more than five hundred dollars. (103 v. 499; R. S. Sec. 7067. Amended March 1923.)

In a prosecution for offering commodities for sale in a measure which is not tested, marked and sealed by the city sealer of weights and measures the question of the belief of the accused that he had a right to have the box sealed is immaterial, although such belief was based upon the statement made by a former sealer of the municipal corporation; and accordingly, it is not error to refuse to permit the accused to answer the question which is asked by his attorney, "In using that box, did you believe that you had a right to have it sealed?": *Gates v. Cleveland*, 11 O. N. P. (N. S.) 545, 21 O. D. (N. P.) 141.

SECTION 13107. Whoever sells and delivers stone coal except at legal weights and measures, shall be fined not less than five dollars nor more than fifty dollars or imprisonment not less than five days nor more than thirty days. (R. S. Sec. 7070).

Penalty. -  
Selling stone-  
coal by un-  
lawful weights  
or measures.

SECTION 13108. Repealed.

SECTION 13109. Unconstitutional. *Yeazill vs. State*, 10 C. D. 795.

SECTION 13110. Whoever, being the owner or occupier of a mill, or his representative, agent or miller, takes a greater proportionate quantity of toll than is allowed by law, shall be fined not more than twenty dollars and be liable to the party injured in damages. (R. S. Sec. 7086).

Taking illegal  
toll at mill.

SECTION 13127. Whoever, with intent to defraud, constructs or uses a false meter for measuring and registering the gas consumed under a contract with a gas company, shall be fined not more than five hundred dollars or imprisoned not more than thirty days, or both. (R. S. Sec. 7071).

Making or  
using false  
gas meters.

SECTION 13128. Whoever puts up or packs goods or articles sold by weight or count into a sack, bag, barrel, case or package, or whoever puts up or fills a bottle barrel, keg, drum, can or other container with any commodity sold or offered for sale by liquid measure, shall mark thereon in plain letters and figures the exact quantity of the contents thereof in terms of weight, measure or numerical count; provided, however, that reasonable tolerances and variations and also exemptions as to small packages shall be established by rules made by the secretary of agriculture and shall conform to those of the federal law, and provided, further, that this act shall not apply to such packages or containers, weighed, put up, packed or filled in the presence of the customer.

Whoever, with intent to defraud, transfers a brand, mark or stamp placed upon a case or package by a manufacturer to another case or package, or with like intent, repacks a case or package so marked, branded or stamped, with goods or articles of quality inferior to those of such manufacturer shall be deemed guilty of a violation of this section.

Any article or commodity packed and sold by weight shall be sold by net weight only, and no wood, paper, burlap, cord, paraffin or other substance used for wrapping or packing, shall be included as part of the weight of such commodity sold.

Provided, however, that nothing in this section shall prohibit making a reasonable separate charge for any wrapper or container used in packing or preparing such article or commodity for sale, if such be agreed to by the purchasers of such article or commodity at time of sale. Any person, firm, company, corporation or agent, who fails to comply with any provision of this act, shall be fined not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00).

See opinions of Attorney General (1914), Vol. I, p. 942.

Standard for  
barrel of  
flour.

SECTION 5998. Flour and meal shall be packed in well made barrels of seasoned timber, twenty-seven inches in length, when finished, with a cut head of seventeen and one-half inches, tightly bound, with ten smart hoops or six flat hoops two inches broad, secured with four nails in each end hoop, and three nails in each outward bilge hoop. Such barrel shall contain one hundred and ninety-six pounds of flour or meal, and the tare thereof shall be marked on the head of such barrel by the miller, with a marking iron. The weight of the flour or meal shall be branded on the barrel with a branding iron to be provided by him for that purpose. When flour or meal is exhibited for inspection, the inspector shall bore and search it with a proper instrument, to ascertain if it be sweet, and of the kind and quality marked by such miller. If he judge it sweet and of good quality, he shall plug the hole tight, and cause such cask to be branded as is prescribed in this chapter. If on such examination, the flour or meal is found to be sour, of bad quality or not merchantable, it shall be condemned; but if merchantable, though of a quality different from that represented by such miller's brand, such brand shall be erased, and the proper quality branded thereon by such inspector. (29 v. 477).

Standard for  
gallon of  
flaxseed, lin-  
seed and lard  
oil.

SECTION 6006. When linseed, flaxseed or lard oil is sold by the barrel, without a special agreement as to the measurement thereof, the standard for linseed or flaxseed oil shall be seven and one-half pounds to the gallon; and for lard oil, seven and two-fifths pounds to the gallon. (66 v. 117).

What owner  
to return for  
wheat  
ground.

SECTION 5974. An owner or occupier of a grist mill or exchange store refusing to return the product of a grist of wheat ground, less lawful toll, shall return in lieu thereof to his customer, merchantable flour, shorts and bran for each bushel of merchantable wheat weighing sixty or more pounds to the measured bushel, thirty-six pounds of number one family flour and fourteen pounds of shorts and bran; for each bushel of merchantable wheat weighing less than sixty pounds and not less than fifty-nine pounds to the measured bushel, thirty-five pounds of number one family flour and fourteen pounds of shorts and bran; for each bushel of merchantable wheat weighing fifty-eight pounds to the measured bushel, thirty-four pounds of num-

ber one family flour and fourteen pounds of shorts and bran; and for each bushel of merchantable wheat weighing fifty-seven pounds to the measured bushel, thirty-three pounds of number one family flour and fourteen pounds of bran. (R. S. Sec. 4371; 88 v. 397).

## DISTRICT MINE INSPECTOR

SECTION 910. The district inspectors of mines are hereby vested with all the powers and authority of county auditors as sealers of weights and measures in the different counties of this state but shall exercise such authority in connection with weights and measures at mines, only. Each district inspector of mines may upon his regular examination of a mine, and shall upon the written request of the duly authorized representatives of the miners, the owner, lessee or agent or the interested land owner, test the accuracy of the scales at any time, and post in a weigh house a certificate provided by the chief inspector of mines, certifying the condition of the scales, provided that such tests be made at a reasonable time without unnecessary interference with the use of such scales.

District mine inspectors shall be sealers of weights and measures.

In case of a controversy or disagreement between the district inspector of mines, and the owner, lessee or agent of a mine, or persons working therein, or in case of an emergency requiring counsel the district inspector of mines may call upon the chief inspector of mines for such assistance and counsel as is necessary. (101 v. 52).

## PROCEDURE

### Jurisdiction of Justices of the Peace, Etc.

SECTION 13423. Justices of the peace, police judges and mayors of cities and villages shall have jurisdiction, within their respective counties, in all cases of violation of any law relating to:

Special jurisdiction of justices, police judges and mayors.

1. Adulteration or deception in the sale of dairy products and other food, drink, drugs and medicines.
2. The prevention of cruelty to animals and children.
3. The abandonment, non-support or ill treatment of a child by its parent.
4. The abandonment or ill treatment of a child under sixteen years of age by its guardian.
5. The employment of a child under fourteen years of age in public exhibitions or vocations injurious to health, life or morals, or which will cause or permit it to suffer unnecessary physical or mental pain.
6. The regulation, restriction or prohibition of the employment of minors.
7. The torturing, unlawfully punishing, ill treating, or depriving anyone of necessary food, clothing or shelter.

8. The selling, giving away or furnishing of intoxicating liquors as a beverage, or keeping a place where such liquor is sold, given away or furnished, in violation of any law prohibiting such acts within the limits of a township and without the limits of a municipal corporation.

9. The shipping, selling, using, permitting the use of branding or having unlawful quantities of illuminating oil for or in a mine.

10. The sale, shipment or adulteration of commercial feed stuffs.

11. The use of dust creating machinery in workshops and factories.

12. The conducting of a pharmacy, or retail drug or chemical store, or the dispensing or selling of drugs, chemicals, poisons or pharmaceutical preparations therein.

13. The failure to place and keep in a sanitary condition a bakery, confectionery, creamery, dairy, dairy barn, milk depot, laboratory, hotel, restaurant, eating house, packing house, slaughter house, ice cream factory, or place where a food product is manufactured, packed, stored, deposited, collected, prepared, produced or sold for any purpose.

14. Offenses for violation of laws in relation to inspection of steam boilers, and of laws licensing steam engineers and boiler operators.

15. The prevention of short weighing and measuring and all violations of the weights and measures laws.

16. The violation of any law in relation to the practice of medicine or surgery, or any of its branches. (103 v. 539; R. S. secs. 3060a, 3718a; 97 v. 397 sec. 9; 99 v. 32 sec. 3; 99 v. 507 secs. 77, 78; 100 v. 15 sec. 4; 100 v. 64 sec. 6).

The jurisdiction of a police judge or mayor of a city or village is confined to offenses committed within his city or village in cases of violation of the laws to prevent the adulteration of food and drink, the adulteration and deception in the sale of dairy products, drugs and medicines \* \* \* or in any prosecution under this section: *State v. Peters*, 67 O. S. 494.

Under the provisions of G. C. section 13422, a justice of the peace has "jurisdiction in criminal cases, throughout the county in which he is elected and where he resides," and his authority to hear and dispose of a criminal case in the manner prescribed by the statute, is not limited to the township for which he is elected and where he resides: *Steele v. Karb*, 78 O. S. 376.

In a prosecution for selling adulterated milk, unless the affidavit charges the particular sale to be a second or subsequent offense, imprisonment cannot be imposed as a part of the punishment, and a justice of the peace with whom the affidavit is filed has jurisdiction to try the case without a jury: *Inwood v. State*, 42 O. S. 186, approved and followed; *State v. Smith*, 69 O. S. 196.

Mandamus will lie to compel the exercise of such jurisdiction: *In re Turner*, 5 Ohio 542; *State, ex rel., v. McCarty*, Judge, 52 Ohio St., 363, approved and followed; *State v. Smith*, 69 O. S. 196.

The introduction of coloring matter into oleomargarine is the adulteration of an article of food punishable by law, and of such offense a justice of the peace has jurisdiction: *State v. Ruedy*, 57 O. S. 224.

Selling morphine in a patent medicine without a "poison" label pasted on the bottle is not an "adulteration or deception" so as to

confer jurisdiction upon a justice of the peace: *State v. Marvin*, 5 O. N. P. 209, 5 O. D. (N. P.) 593, 7 O. D. (N. P.) 204.

"Deception" as used in this section, means because of, or the result of adulteration and deception caused by the imitation and counterfeiting of the natural products of food, such as cheese, butter and all artificial and counterfeit foods and drinks: *State v. Marvin*, 5 O. N. P. 209, 5 O. D. (N. P.) 593, 7 O. D. (N. P.) 204.

This section contained the only provision for the trial of persons accused of violating R. S. section 4405 (repealed 99 v. 511), regulating the sale of drugs and poisons: *Sickles v. State*, 7 O. N. P. (N. S.) 338, 19 O. D. (N. P.) 117.

In a case which involves a violation of a statute or of an ordinance, the penalty for which is only a fine, a jury is not an inalienable right of the accused, and it accordingly may be refused if the statute so provides: *Ames v. State*, 11 O. N. P. (N. S.) 385, 22 O. D. (N. P.) 92, 56 Bull. 165 (Ed.).

The mayor of the city of Youngstown has jurisdiction to hear and finally determine misdemeanor when no imprisonment is part of the penalty. *Dominick v. State*, 6 C. C. (N. S.) 192, 17 C. D. 305.

Sec. 13423-1. Justices of the peace, police judges and mayors of cities and villages shall have jurisdiction, within their respective counties, in all cases of violation of any law relating to the filling or refilling of registered containers by other than the owner, or the defacing of the marks of ownership thereon.

Jurisdiction continued.

SECTION 13426. In all cases of summary conviction before a justice of the peace of an offense punishable by fine or imprisonment, the defendant shall have the right to except and to have a bill, containing the exceptions, signed by such justice and made part of the record. Such convictions may be reviewed by the common pleas court on proceedings in error and reversed or affirmed. (R. S. Sec. 614).

Bills of exceptions in summary convictions.

A bill of exceptions taken in a trial before a justice of the peace in a criminal case is not required to be entered upon his docket. It is sufficient if it be allowed and signed by the justice and filed with the papers in the case, and an entry of these facts with the date thereof is made on his docket: *State v. Ransick*, 62 O. S. 283.

SECTION 13427. For signing a bill of exceptions, a justice of the peace shall be allowed ten cents, and for copying and certifying the transcript of the proceedings and a bill of exceptions, ten cents for each hundred words, to be taxed in the cost bill and collected as other costs. (R. S. Sec. 615).

Justice's fees for such bills.

SECTION 13432. In prosecutions before a justice, police judge, mayor, when imprisonment is a part of the punishment, if a trial by jury is not waived, the magistrate, not less than three days nor more than five days before the time fixed for trial, shall certify to the clerk of the court of common pleas of the county that such prosecution is pending before him. (R. S. Sec. 3718a).

When imprisonment is a part of the punishment a jury shall be impaneled.

The waiver of a jury under this section must clearly and affirmatively appear upon the record, and it can not be assumed or implied by a reviewing court from the silence of the accused, or his mere failure to demand a jury (*Dailey v. State*, 4 O. S. 57).

and *Billigheimer v. State*, 32 O. S. 435, distinguished): *Simmons v. State*, 75 O. S. 346.

It is not necessary that the defendant should waive in writing his right to a trial by jury: *Martindale v. State*, 2 O. C. C. 2, 1 O. C. D. 328.

For former statute see *Peters v. State*, 8 O. N. P. 595, 11 O. D. (N. P.) 555 (affirmed 67 O. S. 494).

See opinion of attorney general. (1912), Vol. I, p. 258.

Cited: *Gibbs v. State*, 18 C. C. (N. S.) 480.

Article I, sections 5 and 10, of the Ohio constitution, are not intended to enlarge the right of trial by jury, or to modify it. Its sole purpose is to guarantee the continuance of the right of trial by jury as it existed under the constitution of 1802, and prior thereto as it existed at common law. *Ames v. State*.

In case which involves a violation of a statute or of an ordinance, the penalty for which is only a fine, a jury is not an inalienable right of the accused, and it accordingly may be refused if the statute so provides. *Ames v. State*, 11 O. N. P. (N. S.) 385, 22 O. D. (N. P.) 92, 56 Bull. 165 (Ed.).

This section gives final jurisdiction to justices of the peace in cases in which imprisonment is a part of the punishment and a jury is not waived, and where it is attempted to carry such a case to the probate court a motion to discharge the accused will lie. *State v. Pohlman*.

The court has no right to consider the prior history of legislation, and the effect of a rearrangement or transposition of statutes by the codifying commission if the statute itself is plain and unambiguous, even though from a consideration of its history the court may be sure that the legislature did not intend to enact what it in fact enacted. *State v. Pohlman*.

For a discussion of the history of this section and G. C. section 13423, and for the effect of the arrangement by the codifying commission by which these sections are separated from each other and placed in different chapters, see *State v. Pohlman*, 13 O. N. P. (N. S.) 254, Bull. 411 (Ed.).

#### Clerk's duties.

SECTION 13433. Thereupon the clerk, in the presence of representatives of both parties, shall draw from the jury wheel or box containing the names of persons selected to serve as petit jurors in the court of commons pleas in such county, twenty names which shall be drawn and counted in a like manner as for jurors in the court of commons pleas. The clerk shall forthwith certify the names so drawn to the magistrate, who thereupon shall issue to any constable, chief of police or marshal in the county, a venire containing the names of the persons to serve as jurors in the case and make due return thereof. (R. S. Sec. 3718a).

See opinions of Attorney General (1912), Vol. I, p. 258; (1912), Vol. II, p. II, p. 1185.

#### Jurors.

SECTION 13434. The jurors shall be subject to like challenges as jurors in criminal cases except capital cases, in the court of common pleas. If the venire is exhausted without obtaining the number required to fill the panel, the magistrate shall fill the panel with talesmen in the manner provided for criminal cases in the court of common pleas. (R. S. Sec. 3718a).

See opinions of Attorney General (1912), Vol. I, p. 258.

SECTION 13435. In such prosecutions, where a different punishment is provided for a second or subsequent offense, the information or affidavit upon which the prosecution is based, must charge that it is the second or subsequent offense or the punishment shall be as for the first offense. (R. S. Sec. 3718a).

Second or subsequent offense.

See opinions of Attorney General (1912), Vol. I, p. 258.

This section does not amount to a delegation of legislative or judicial power to the prosecuting witness, although he may charge the accused with committing a first offense and thereby subject him in many cases to a less severe punishment; and in some cases where the first offense is punishable by fine only, and the second offense by fine or imprisonment, he may deprive the accused of a jury trial under G. C. sections 13432 and 13434 by charging him with a first offense. *Gibbs v. State*, 18 O. C. C. (N. S.) 480.

SECTION 13436. In pursuing or arresting a defendant and in subpoenaing the witnesses in such prosecutions, the constable, chief of police, marshal or other court officer shall have like jurisdiction and power as the sheriff in criminal cases in the common pleas court, and he shall receive like fees therefor. (R. S. Sec. 3718a).

Jurisdiction and power of constables, etc.

See opinions of Attorney General (1912), Vol. I, p. 258; (1912), Vol. I, p. 395; (1914), Vol. I, p. 449.

SECTION 13437. In such prosecution, if there is a verdict for conviction, a new trial may be granted for like reasons and subject to like conditions as a new trial in criminal cases in the court of common pleas. (R. S. Sec. 3718a).

New trial.

See opinions of Attorney General (1912), Vol. I, p. 258.

SECTION 13438. In such prosecutions, the jurors and the witnesses shall be entitled to like mileage and fees as in criminal cases in the court of common pleas. (R. S. Sec. 3718a).

Fees of jurors and witnesses.

See opinions of Attorney General (1912), Vol. I, p. 258.

A compensation of \$2.00 per day is allowed jurors in a prosecution for the adulteration of food before a justice of the peace under G. C. section 13423: *State v. Atkins*, 9 O. C. D. 373.

SECTION 13439. In such prosecutions, no costs shall be required to be advanced or secured by a person authorized by law to prosecute. (R. S. Sec. 3718a).

Costs.

See opinions of Attorney General (1912), Vol. I, p. 258; (1912), Vol. I, p. 395; (1913), Vol. II, p. 1382; (1914), Vol. I, p. 449; (1914), Vol. II, p. 1730.

There is no authority for the payment of fees out of the county treasury to a humane officer for services rendered by him in cases prosecuted before a justice of the peace by the humane society under the laws of the state: *State, ex rel., v. Kleinhoffer*, 92 O. S. 163.

## COURT DECISIONS

### Foods — Adulterations

Adulteration is the corruption by mixture with some foreign substance or with what is less valuable. *People vs. West*, 44 Hun. (N. Y.), 162; *Com. vs. Hough*, 1 Pa. Dist. Rep., 51.

Addition of water is adulteration. *Com. vs. Scheffner*, 146 Mass., 512.

Persons making sales of adulterated food which is prohibited by statute to be sold do so at their peril. It is within the valid exercise of the police power of a state to enforce a penalty for the sale of adulterated articles of food or drink even though the seller had no knowledge of the adulteration. *People vs. Snowberger*, 113 Mich., 86; *People vs. Worden Grocery Co.*, 118 Mich., 604; *State vs. Kelly*, supra; *Bissman vs. State*, 9 Ohio C. C., 714; *Com. vs. Farran*, 9 Allen (Mass.), 489; *Same vs. Nichols*, 10 Allen (Mass.), 190; *Same vs. Evans*, 132 Mass., 11.

Statutes prohibiting sale of adulterated provisions are valid. *State vs. Marshall*, 64 N. H.

Persons furnishing provisions for market liable for violations. *Hunter vs. State*, 1 Head (Tenn.), 160; *People vs. Parker*, 38 N. Y., 35.

Adulterated food need not be shown to have produced sickness to convict. *Goodrich vs. People*, 19 N. Y., 577; *Com. vs. Kolb*, 13 Pa. Super. Ct., 347.

The master is liable for sale by servant. *Com. vs. Gray*, 150 Mass., 327; *Com. vs. Warren*, 160 Mass., 533; *Com. vs. Veith*, 155 Mass., 442; *Bissman vs. State*, 9 Ohio C. C., 714.

Possession by servant is possession by master. *Com. vs. Proctor*, 165 Mass., 38.

Penalty may be recovered in civil suit and is not crime. *State vs. Grove*, 77 Wis., 48; *Cloud vs. Hewitt*, 5 Fed. Cases, 1983.

A food inspector cannot compel, by injunction a manufacturer to sell an article of food for analysis, his remedy is by prosecuting under section for refusing to furnish. *State vs. Capital City Dairy Co.*, 62 Ohio St., 123.

Possession of adulterated tea for sale is nuisance. *Health Department vs. Purdon*, 99 N. Y., 237.

To offer liquid chicory and coffee as "liquid coffee" is offense against food law. *State vs. Dreher*, 55 Ohio St., 115.

Selling raspberry syrup containing salicylic acid is violation and question whether injurious to health or not is not material. *Com. vs. Kevin*, 1 Penn. Supr. Ct., 414.

Any person may make complaint of violations of food laws. *Isenhour vs. State*, 157 Ind., 517; *Com. vs. Mahen*, 176 Mass., 132.

Under statute as to sale of article it is not necessary to allege that factory was a "full cream" factory where the sale was for selling skim milk to other than "skim milk" factory. *People vs. Spees*, 46 N. Y. Supp., 995.

Official character of chemist established prima facie by his testimony. *Vandergrift vs. Niehla* (N. J., 1901), 49 A., 16.

## Lard

Law requiring lard to be labeled stating ingredients, etc., is valid. *State vs. Snow*, 81 Iowa, 642; *State vs. Aslesen*, 50 Minn., 5.

Cottolene manufactured to resemble lard should be marked "Lard Substitute" under statute requiring lard substitutes to be so labeled. *State vs. Hansen* (Minn.), 54 L. R. A., 468.

## Vinegar

Standard may be fixed and vinegar must comply. *People vs. Worden Grocery Co.*, 118 Mich., 604.

Adulteration and artificial coloring of vinegar may be prohibited. *Weller vs. State*, 53 Ohio State, 77.

Coloring vinegar during manufacture is artificial color. *Weller vs. State*, *Supra*.

Act forbidding manufacture and sale of vinegar containing artificial matter, is valid. *People vs. Girard*, 145 N. Y., 105.

## Liquors

It is not unconstitutional to prohibit the sophistication or adulteration of wine. *Ex parte Kohler*, 74 Cal., 38.

Law prohibiting manufacture of beer or malt liquor from substances, etc., other than hops, etc., is accurate though it does not name water as proper material. *State vs. Bixman*, 162 Mo., 1.

Whiskey is a drug under adulteration clause. It is offense to adulterate whiskey even though sold as beverage. *State vs. Hutchinson*, 56 O. S. 82; *Same vs. Same*, 55 O. S. 573.

On prosecution for sale of adulterated whiskey it is immaterial that it was sold by saloon keeper and as a beverage. *State vs. Hutchinson*, 56 Ohio St., 82.

It is not necessary to show that the acid in wine is injurious to health in order to sustain prosecution for selling adulterated food and drink. The putting of acid therein is an adulteration. *State vs. Hays*, 7 Ohio N. P., 624.

To sustain conviction for selling adulterated wine it is not necessary to prove seller knew it was adulterated. *Altschul vs. State*, 8 Ohio Cir. Ct. Rep., 214.

Agent of principal who is not resident is liable if he only sends order to principal to ship goods to buyer. *Meyer vs. State*, Ohio St., 242.

## Baking Powder

The formula of baking powder may be required—no man has the constitutional right to keep secret the composition of substances he sells to public as food. *State vs. Aslesen*, 50 Minn., 5; *State vs. Sherod*; *State vs. Horrigan*, 80 Minn., 446.

Alum baking powder must be marked as required by law. *Stortz vs. Thompson*, 44 Minn., 271.

## Standards

Laws providing for board of health to make minimum standard is not unconstitutional and the law took effect because of the power that made the law and the taking effect was only delayed till the standard was made. *Isenhour vs. State*, 157 Ind., 517; *City of Gloversville vs. Enos*, 72 N. Y. St., 398.

## Dairy Products

The adulteration of milk may be prohibited although it be sold openly, fairly and with notice and although the adulteration is harmless. *State vs. Schlenker*, 112 Iowa, 642.

Term milk includes cream and addition of boracic acid is adulteration. *Com. vs. Gordon*, 159 Mass., 8.

If percentage of water in milk is fixed at not more than 87 per cent and milk solids not less than 13 per cent if it contains a greater per cent of water must be sold as skim milk, and if not seller is liable. *Com. vs. Tobias*, 149 Mass., 129.

In prosecution for selling adulterated milk it is immaterial how quantity of milk solids have been reduced below standard. *Com. vs. Bowers*, 140 Mass., 483.

To convict for selling adulterated milk it is sufficient to show that glass of adulterated milk was sold. *Com. vs. Veith*, 155 Mass., 442; *Com. vs. Warren*, 160 Mass., 533.

Act prohibiting sale of adulterated milk is constitutional. *State vs. Schlenker*, 112 Iowa, 642.

Milk or cream taken from wagon at early hour in morning; held, defendant was offering cream for sale under the evidence submitted. *People vs. Hills*, 72 N. Y., 340.

Affidavit charging defendant in possession of adulterated milk although it does not charge that he adulterated it is good. *Isenhour vs. State*, 157 Ind., 517.

Proof of criminal intent is unnecessary. *Com. vs. White*, 11 Allen, (Mass.), 264; *Com. vs. Smith*, 103 Mass., 444; *Com. vs. Warren*, 160 Mass., 553; *Com. vs. Veith*, 155 Mass., 442.

The keeping or offering for sale or having in possession with intent to sell of adulterated milk is violation of law. *People vs. Justice*, 7 Hunter (N. Y.), 214; *Polinsky vs. People*, 73 N. Y., 65.

A law which requires all milk to come up to a certain standard is a valid exercise of police powers. *Deems vs. Mayor*, 80 Md., 164; *State vs. Crescent Creamery Co.*, 83 Minn., 284; *Kansas City vs. Cook*, 30 Mo. App., 660; *State vs. Campbell*, 64 N. H., 402; *State vs. Smith*, 14 R. I., 100; 51 Am. Rep., 344; *Baker vs. Luther*, 20 R. I., 472.

It is not necessary to show that a person selling milk knows that it is below the legal standard. The legislature has the power to pass a law, the violation of which may be punished without regard to motive or knowledge on the part of violator. *Vandergrift vs. Niehls*, (N. J. 1901), 49 A., 16; *State vs. Schlenker*, 12 Ia., 642; *People vs. Schaeffer*, 41 Hun. (N. Y.), 23; *Same vs. Cipperly*, 101 N. Y., 634; *Same vs. Kibler*, 106 N. Y., 321; *Same vs. Eddy*, 12 N. Y., Supp., 628.

Regulation of the sale of dairy products by law is constitutional. *Holtgrieve vs. State*, 7 Ohio N. P., 389.

Cans or vessels from which skimmed milk is sold must be labeled as provided by law. *Com. vs. Hugh*, 1st Pa. Dist. Rep., 51.

Milk delivered to a purchaser of a meal as a part thereof is a sale as though bought and paid apart from the meal. *Com. vs. Warren*, 160 Mass., 533.

It is not unconstitutional to declare by law that a certain class of people shall not sell impure milk within the city or village even though the law is not intended to apply to other persons who sell milk in the country. *State vs. Broadbelt*, 89 Md., 565.

Vendors of milk may be required to register. *City of Cloversville vs. Enos*, 72 N. Y. St., 398.

An honorably discharged soldier must register before receiving license. *City of Cloversville vs. Enos*, *Supra*.

It is not necessary to show the particular manner in which analysis was made. *Vandergrift vs. Niehls*, (N. J., 1901), 49 A., 16.

The state may fix an arbitrary standard below which milk cannot be sold and evidence that the milk was below that standard when given by the cow is not a defense. *State vs. Campbell*, 64 N. H., 402.

Evidence that the defendant's cows were properly fed is not admissible to discredit chemist's analysis. *State vs. Campbell*, *Supra*.

Evidence that defendant on a wagon had a license and had milk can in one of which was adulterated milk is sufficient evidence that he was in possession of adulterated milk with intent to sell the same. *Com. vs. Rowell*, 146 Mass., 128.

Evidence that defendant was on street in a wagon at an early hour with several cans from one of which inspector took a sample which can was not marked "Skimmed Milk" and the milk on analysis was below standard is sufficient evidence to show an intent to sell the milk in the wagon. *Com. vs. Smith*, 142 Mass., 169.

When the law requires the record of an analysis to be made and preserved as evidence and a certificate of such analysis sworn to by the analyst is made admissible in evidence against a defendant an averment that the milk was not of the standard quality, is sufficient. *Com. vs. Lapham*, 156 Mass., 480.

The evidence of the person who analyzed the milk and who is shown to have sufficient skill to analyze milk is admissible. *Com. vs. Holt*, 146 Mass., 38.

The state may authorize the analysis of milk and evidence thereof may be given in even though the milk has been destroyed. *State vs. Campbell*, 64 N. H., 402.

Evidence of a test of milk even though made nearly a year after the sale of the milk is admissible. *Stearns vs. Ingraham*, 1 *Thomp. & Co.* (N. Y.), 218.

### **Cheese**

Evidence that cheese was made from milk, which was lumpy and bloody, is bloated and puffed and inferior in quality and that some cheese manufactured from milk furnished by the defendant in common with others was so bloated and puffed is sufficient to show that the milk furnished by the defendant was lumpy or bloody. *Bilgrien vs. Dowe*, 91 Wis., 393.

Statute requiring cheese to be branded with the name and address of the manufacturer and the kind of cheese it is, is valid and the lettering must be the required size. 6th Pa. Dist. Rep., 689.

If cheese is made out of the state the dealer may brand with his name and address. 20 Pa., Co. Ct., 61.

### **Oleomargarine**

An act which prevents the manufacture or sale of imitation butter or cheese does not violate the rights of a patentee or manufacturer. 39 Ohio St., 236; *Palmer vs. State*, 48 Am. Rep., 429; *State vs. Capital City Dairy Co.*, 62 Ohio St., 350; 22 St. Ct., 120; *Com. vs. Diefendacher*, 14 Penn. Super. Ct., 264.

Oleomargarine must be marked as provided by law. *Haines vs. The People*, 7 Colo. App., 467; *State vs. Dunbar*, 13 Ore., 591.

Statutes which prohibit the manufacture of substitutes or imitations of butter are valid exercise of the police power and are constitutional. *Cook vs. State*, 110 Ala., 40; *Powell vs. Com.*, 114 Pa. St., 268; *Com. vs. Shirley*, 152 Pa. St., 170; *Com. vs. McCann*, 14 Pa. St. Sup. Ct., 221; *Pierce vs. State*, 63 Ind., 592.

It is unlawful to manufacture or sell products made from vegetable oils or animal fats or oils which are designed to take the place of butter or cheese. It is not necessary to prove the act beyond a reasonable doubt; a preponderance of the evidence is sufficient. *People vs. Briggs*, 114 N. Y., 56; *State vs. Rogers*, 95 Me., 94; *Palmer vs. State*, 39 O. S. 236.

A state may exclude any compound manufactured in another state and colored in imitation of yellow butter. *State vs. Rogers*, 95 Me., 94; *Fox vs. State*, 89 Md., 381; *Com. vs. Paul*, 148 Pa. St., 559; *Hancock vs. State*, 89 Md., 725.

Statutes which prohibit the manufacture or sale of any article in imitation of butter or cheese are within the police power of the state. *Powell vs. Pa.*, 127 U. S., 678; *Walker vs. Pa.*, 127 U. S., 699; *In re. Brosnahan*, 18 Fed. Rep., 62; *Com. vs. Huntly*, 156 Mass., 236; *Butler vs. Chambers*, 36 Minn., 69; *State vs. Bockstruck*, 136 Mo., 335; *State vs. Addington*, 77 Mo., 110; *State vs. Addington*, 12 Mo. App., 217.

In selling oleomargarine for butter the intention to deceive is not an essential element of the offense; the sale is prohibited without regard to intention. *State vs. Addington*, 77 Mo., 110; *State vs. Ryan*, 70 N. H., 196; *State vs. Newton*, 50 N. J. L., 549; *Com. vs. Gray*, 150 Mass., 237; *People vs. Hellman*, 68 N. Y. S., 66; *Same vs. Same*, 15 N. Y. C. R., 394.

Furnishing oleomargarine as a part of a meal ordered by a customer is sufficient to convict a restaurant keeper of selling oleomargarine. *Com. vs. Miller*, 13 Pa. State, 118; *Com. Alleghany Co. vs. Hendley*, 7 Pa. Super. Ct., 365; *State vs. Ball*, 70 N. H., 40; *Com. vs. Stewart*, 159 Mass., 113; *Hancock vs. State*, 89 Md., 724.

Person selling article for butter which is one-fourth part foreign matter is guilty of violating Act prohibiting sale of substance not butter as butter. *People vs. Mahaney*, 7 Hun. (N. Y.), 26.

An offer to sell may be inferred from exposing oleomargarine not labeled as such upon the shelves or counter with other pure butter. *State vs. Dunbar*, 13 Or., 591.

Statute requiring both side of wagon selling oleomargarine to be placarded with uncondensed gothic letters not less than three inches in length, "Licensed to Sell Oleomargarine," is not complied with by putting placard on inside of covered wagon. *Com. vs. Crane*, 157 Mass., 218.

Sample illegally taken may be used as evidence in prosecution for exposing oleomargarine in imitation of butter. *Com. vs. Byrnes*, 15 Mass., 172.

Oleomargarine should be marked and packed as required by law and requiring it to be packed and branded as the Commissioner of Agriculture may direct is not a delegation to that officer of the power to declare what acts shall be criminal because the law directs that the same shall be packed and branded and prohibits the sale of those which are not, leaving the kind to be determined by that officer. *U. S. vs. Daugherty*, 101 Fed., 439; *Ex-parte Hollock*, 165 U. S. 526.

An indictment need not allege that oleomargarine was fraudulently sold. *Fox vs. State*, 94 Md., 143.

A justice of the peace has jurisdiction over the offense of coloring oleomargarine. *State vs. Ruedy*, 59 Ohio St., 24.

Butter may be colored yellow, but oleomargarine may not be colored yellow in imitation of butter. *Com. vs. Vandyke*, 13 Penn. Sup. Ct., 484; *McCann vs. Com.*, 198 Penn., 509; *In re. Schichtlin*, 99 Fed. 272.

Law requiring oleomargarine to be colored pink is constitutional. *Armour Packing Co. vs. Snyder*, 84 Fed. Rept., 136 (Minn.)

National legislation on oleomargarine does not restrict the power of the state. A state may exclude from its markets any compound, manufactured in another state, another state, artificially colored or adulterated so as to cause it to look like an article of food in general use and thereby cheat the general public. *Plumley vs. Massachusetts*, 155 U. S., 461.

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